



**PARLIAMENT OF INDIA
RAJYA SABHA**

236

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HUMAN RESOURCE DEVELOPMENT**

TWO HUNDRED THIRTY-SIXTH REPORT

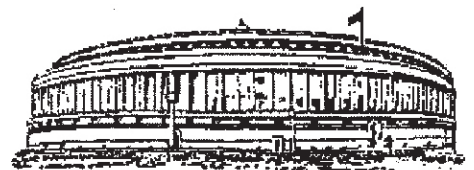
ON

**THE PROHIBITION OF UNFAIR PRACTICES IN TECHNICAL
EDUCATIONAL INSTITUTIONS, MEDICAL EDUCATIONAL
INSTITUTIONS AND UNIVERSITIES BILL, 2010**

**(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 30TH MAY, 2011)
(FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON 30TH MAY, 2011)**

**(PRESENTED TO RAJYA SABHA ON 1ST AUGUST, 2011)
(LAID ON THE TABLE OF LOK SABHA ON 2ND AUGUST, 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
AUGUST, 2011/SRAVAN, 1932 (SAKA)**



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COMPOSITION OF THE COMMITTEE
(2010-11)

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shri Mohsina Kidwai
3. Dr. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi
9. Dr. Janardhan Waghmare
10. Shri N. Balaganga

LOK SABHA

11. Shri Kirti Azad
12. Shri P. K. Biju
13. Shri Jitendrasingh Bundela
14. Shri Suresh Chanabasappa Angadi
15. Shrimati J. Helen Davidson
16. Shri P.C. Gaddigoudar
17. Shri Rahul Gandhi
18. Shri Deepender Singh Hooda
19. Shri Prataprao Ganpatrao Jadhav
20. Shri Suresh Kalmadi
21. Shri P. Kumar
22. Shri Prasanta Kumar Majumdar
23. Capt. Jai Narain Prasad Nishad
24. Shri Sis Ram Ola
25. Shri Tapas Paul
26. Shri Brijbhushan Sharan Singh
27. Shri Ashok Tanwar
28. Shri Joseph Toppo
29. Dr. Vinay Kumar Pandey
30. Shri P. Viswanathan
31. Shri Madhu Goud Yaskhi

(ii)

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Thirty-sixth Report of the Committee on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010. *

2. In pursuance of Rule 270 relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha, referred** the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 (Annexure), as introduced in the Lok Sabha on 3 May, 2010 and pending therein, to the Committee on 13 May, 2010 for examination and report.

3. The Bill, being a landmark legislation for educational reforms in the country, the Committee issued a Press Release for eliciting public opinion. In response, many memoranda on the Bill were received from various organizations/individuals. Views of the stakeholders were circulated amongst the members of the Committee and also formed part of the questionnaire of the Committee referred to the Department of Higher Education for written replies.

4. The Committee considered the Bill in nine sittings held on 23 September, 19 and 28 October, 21 December, 2010, 14, 15 February, 20 April, 5 and 26 May, 2011. The Committee also undertook a study visit to Thiruvananthapuram, Bengaluru and Chennai from 17 January to 23 January 2011. This visit enabled the Committee to interact with the stakeholders representing State Governments, Universities, Institutions, Students and Teachers.

5. The Committee, while drafting the report, relied on the following :

- (i) Background Note on the Bill received from the Department of Higher Education;
- (ii) Note on the clauses of the Bill received from the Department of Higher Education;
- (iii) Verbatim record of the oral evidence taken on the Bill;
- (iv) Presentation made and clarification given by the Secretary, Department of Higher Education;
- (v) Memoranda received from organizations/individuals;
- (vi) Replies to questionnaire received from the Department of Higher Education; and
- (vii) Replies to questionnaire received from the stakeholders.

6. The Committee considered its Draft Report on the Bill and adopted the same in its meeting held on 26 May, 2011.

7. Four notes of dissent given by S/Shri Prashanta Kumar Majumdar, Pramod Kureel, P.K. Biju and Shri Sheesh Ram Ola are appended to the Report.

* Published in Gazette of India Extraordinary Part II Section 2 dated 3rd May, 2010.

** Rajya Sabha Parliamentary Bulletin Part II No. 47228 dated 13th May, 2010.

(iv)

8. For facility of reference, observations and recommendations of the Committee have been printed in bold letters at the end of the report.

NEW DELHI;
May 26, 2011

Jyestha 9, 1932 (*Saka*)

OSCAR FERNANDES
Chairman,
Department-related Parliamentary
Standing Committee on Human Resource Development.

REPORT

I. Introduction

1.1 The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 was referred to the Department-related Parliamentary Standing Committee on Human Resource Development by the Hon'ble Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha on 13 May, 2010 for examination and report.

1.2 The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 seeks to provide for the prohibition of certain unfair practices in technical educational institutions, medical educational institutions and universities and to protect interests of students admitted or seeking admission therein and to provide for matters connected therewith or incidental thereto.

1.3 The Statement of Objects and Reasons to the Bill reads as follows:-

“There is public concern that technical and medical educational institutions and universities should not resort to unfair practices such as charging of capitation fee and demanding donations for admitting students, not issuing receipts in respect of payments made by or on behalf of students, admission to professional programmes of study through non-transparent and questionable admission processes, low quality delivery of education services and false claims of quality of such services through misleading advertisements, engagement of unqualified or ineligible teaching faculty, forcible withholding of certificates and other documents of students.

Prompt and effective deterrent action is constrained in the absence of any Central law prohibiting capitation fee and other unfair practices. While the current policy in higher education is to promote autonomy of institutions, adoption of unfair practices by misusing autonomy would be disastrous for the credibility of the higher education sector. It would be in public interest to balance autonomy of higher education institutions with measures to protect the interests of students and others accessing higher education.”

1.4 The Secretary, Department of Higher Education, in her deposition before the Committee, highlighted the fact that unprecedented growth in higher education, especially in technical and medical education had resulted in widespread prevalence of unfair practices. The Department had been working on a series of educational reforms, keeping in mind two underlying principles. Firstly, education was a public merit good and that tenet needed to be reinforced. Secondly, education had to be made accessible to all. Within these two underlying principles, the Department had been taking steps to regulate education, keeping in mind the imperative that the autonomy of educational institutions needed to be safeguarded. The present legislation was one such step which was significantly disclosure-based and did not envisage any interventionist or inspectorate system.

1.5 **The Committee welcomes the proposed legislation having the laudable objective of protecting the interests of student community.** It is a well known fact that with the massive expansion of higher education institutions in the country, uncalled for increase in prevalence of unfair practices has also become very evident. The Committee takes note of the following disturbing observations made by the Yashpal Committee in the context of malpractices indulged into by unscrupulous education providers:

- Many of the professional colleges, immediately after getting approval from regulatory bodies for university status, start admitting students 5 to 6 times their intake capacity, without a corresponding increase in faculty strength or academic infrastructure.
- Many private institutions charge exorbitant fees.
- Norms for fixation of fees being vague, the quantum of fees charged has no rational basis.
- Appointment of teachers is made at the lowest possible cost, who are asked to work in more than one institution, their salary being paid only for nine months, actual payment being much less than the amount signed for, impounding of their certificates and passports, compelling them to award pass marks in the internal exams.

In such a scenario, nobody can deny the fact that there is an urgent need for having a Central law for curbing of all kinds of unfair practices prevalent in our higher educational institutions. Against this backdrop, the Committee has undertaken the examination of the proposed legislation from all conceivable angles. In this study, the Committee has held interactions with all stakeholders including regulatory bodies, State Governments, various associations/organizations representing higher educational institutions, students/individuals, etc.

1.6 Before initiating the deliberation process, the Committee decided to seek the views of all concerned. Accordingly, a Press Release inviting memoranda/suggestions on various provisions of the Bill from all the stakeholders was issued on 25 May, 2010. The Press Release elicited a good response from the stakeholders. Out of the 36 memoranda received on the Bill, prominent were from the Indian Council of Universities, Education Promotion Society for India, PRS Legislative Research, Punjab Unaided Technical Institutions Association, Viveka Bharathi Educational Research Society and Coordination and Political Affairs Committee, All India Forum for Right to Education, Federation of Associations of Management of Unaided Professional Educational Institutions in India, Senior Citizen Saraspur Seva Trust and National Institute of Technical Teacher's Training and Research and other individuals. The Committee took note of the major concerns highlighted in the memoranda, especially with regard to unfair practices prevalent in higher educational institutions and suggestions therefor. The Committee forwarded the memoranda received from the stakeholders to the Department for ascertaining its views. Feedback from the Department, clarifying various issues raised by the stakeholders has been taken note of by the Committee.

1.7 During interactions of the Committee, it was also emphasized to adopt a somewhat different approach on the enabling framework which focuses not merely on enumerating various forms of unfair practices but embedded in the Rights based approach which enlists the Rights of Students who have secured access to educational institutions. This suggestion merits serious consideration.

II. CONSULTATION PROCESS

2.1 Keeping in view the likely impact of the proposed legislation on higher educational institutions spread across the country, the opinion and assessment of all the stakeholders right from the policy-makers to those involved in the functioning of all categories of higher educational institutions is very vital to make it a viable and fully effective piece of legislation. The Committees, accordingly, made specific inquiries from the Department in this regard. The Committee was informed that the draft legislative proposal was referred to the Chief Secretaries of all State Governments and the Administrators of Union Territories by the Secretary, Department of Higher Education *vide* letters dated 10 July, 2009. No State had opposed the proposal to bring in a legislation to prohibit and punish malpractices. The draft proposal was also discussed in the meeting of Secretaries in-charge of Higher and Technical Education of State Governments convened on 24 July, 2009. Except for a comment by the Kerala Government representative that the proposed

“malpractices law” would be incomplete without a proper regulatory framework, no other Secretary from any other State made any adverse comment on the legislation. Prior to that, the broad policy regarding banning capitation fees and prohibiting unfair practices was also discussed during the State Education Ministers Conference held on 23-24 July, 2008. The States concurred with the proposal of the Central Government to pursue legislative initiatives for ensuring access with equity and controlling the fees charged by private institutions and institutions deemed to be universities. Finally, the legislative proposal was discussed at the 56th meeting of the Central Advisory Board on Education (CABE), the highest policy advisory body to advise the Central and State Governments in the field of education, held on 31 August, 2009. The meeting was attended by Ministers in-charge of Education from as many as 19 States. CABE had passed a unanimous resolution endorsing the need for the proposed law.

2.2 On a specific query about inclusion of suggestions given by the State Governments, the Committee was informed that three major suggestions regarding the legislation were submitted. These were:-

- Need to bring in all educational institutions within the purview of the legislation, including agricultural education.
- The legislation will be incomplete without a proper regulatory framework.
- The federal spirit of the Constitution should not be compromised.

It was clarified by the Department that the agricultural education could not be included in the legislation since it was within the competence of State Legislature to enact laws concerning the agricultural education. It was further submitted that the Bill proposed to make violation of existing regulations, norms punishable and already provided the scope for punishing violation of any regulation as and when introduced in future as well. Finally, it was made clear that the existing State laws and regulations pertaining to fee fixation, admissions etc. would be respected and the Bill did not encroach on the States’ authority.

2.3 **The Committee is not happy with the level of consultations undertaken by the Department with respect to the Bill. There has been lack of a thorough consultative process while drafting such a historic piece of legislation having a wide ranging impact on the functioning of higher educational institutions spread across the country. Mere sending of the draft legislative proposal to the Chief Secretaries of all State Governments and Administrators of UTs by the Department in 2009, in the absence of any response from any State Government cannot be considered as concurrence on their part. The Committee is well aware of the fact that CABE is the highest policy advisory body of education in the country. However, passing of a unanimous resolution endorsing the need for the proposed law in the CABE Committee meeting having 17 State Ministers representing higher and technical education can only be viewed as a formal decision. To think that intensive deliberations analyzing not only the broad parameters of a piece of legislation but also likely impact of its various provisions on all concerned can be undertaken at such a high level meeting could be considered totally impractical. Right course of action would have been pursuing this crucial policy matter with all the State Governments, at least those having a very high concentration of higher educational institutions.**

2.4 Not only this, the Committee is dismayed to observe that other major stakeholders, *i.e.* statutory regulatory bodies like UGC, MCI, AICTE etc. remained a part of the formal exercise only. On a specific query in this regard, the Ministry has candidly admitted that no direct consultations with regulatory bodies like MCI, DCI, etc. have been undertaken since consultations with these bodies are internal to the Ministry of Health and Family Welfare, being under the purview of that Ministry. Presence of Chairman, Academic Cell,

MCI in the CABE Committee meeting was considered adequate enough. The Committee is compelled to point out that this line of action has been taken by the Department in respect of its own regulatory bodies like UGC and AICTE. Like MCI, UGC and AICTE only remained a part of the unanimous endorsement for the need for such a law at the CABE Committee meeting.

2.5 Higher Educational Institutions including Universities, technical and medical institutions and colleges are to be covered under the proposed legislation. Trusts/societies running such institutions as well as quite a few associations/organizations representing their interests can, therefore, be rightfully considered a major stakeholder. A specific query about the level of consultations with them also elicited a very discouraging response from the Department. Submission of the Department was that the summary of the legislative proposal which has remained on its website since August, 2009 has been receiving feedback from the private organizations, also cannot be considered justifiable enough. In the light of apparent lack of required consultation process on such a crucial piece of legislation having a far-reaching impact on a very large number of higher educational institutions across the country, the Committee decided to interact with all the stakeholders to the extent possible.

2.6 The Committee undertook a study visit of Thiruvananthapuram, Bangalore and Chennai from 17 to 23 January, 2011 to get a first hand feedback from the stakeholders such as students, representatives of private and government institutions, experts on the subject and the representatives of the State Governments. States like Tamil Nadu, Karnataka and Kerala are known for having the maximum concentration of technical and medical educational institutions in the country with lakhs of students from other parts of the country going there every year for their education.

2.7 The study visit proved to be very beneficial. The Committee, while interacting with the students got to know about various malpractices prevalent in higher educational institutions like:- payment of capitation fee, lack of quality faculty, unfair practices involved in internal exams, sexual and mental harassment, demand of fee and fines beyond the regular fee, leaking question papers on payment of money, SC/ST students not getting scholarship and stipend and refund of fee, high fee for re-valuation of exam papers, lack of a regulatory mechanism for effective monitoring of colleges/institutions in private sector. The representatives of the State Governments and Government institutions welcomed the Bill. They supported the need for a common entrance test for admission and transparent and uniform fee structure; inclusion of minority institutions within the purview of the Bill; de-affiliation and de/recognition of the institutions for serious offences; formation of a National Teaching Association for recruitment of qualified faculty etc. The representatives of private institutions, while welcoming the Bill, were skeptical about some of the provisions of the Bill which they considered too harsh. These provisions were regarding the high penalties for offenses/violations and imprisonment. Problems being encountered in getting good faculty and tedious procedures requiring fourteen NOCs for opening a University/institution leading to corruption were also highlighted by them. The Committee took note of the wide gamut of prevalent malpractices and also the suggestions of all the stakeholders.

2.8 The legislation being a path breaking one in curbing the unfair practices in higher technical and medical educational institutions, the Committee has tried to do justice by consulting various stakeholders. The Committee started its deliberations with a preliminary discussion on the Bill with the Secretary, Department of Higher Education on 23 September, 2010 followed by another meeting with the Secretary on 19 October, 2010. Subsequent to the meetings with the Secretary, Department of Higher Education, the Committee heard the views of Chairman, University Grants Commission and the Secretary, Ministry of Health & Family Welfare along with Chairman, Board of Governors of Medical Council of India on the proposed Bill on 28 October, 2010. The

Committee also heard the views of Chairman, All India Council for Technical Education in its meeting held on 14 February, 2011. Apart from this, the Committee also held a series of meetings with a number of organizations/associations/universities like Indian Council of Universities, Education Promotion Society for India, Association of Indian Universities, Manav Rachna International University, Amity University and Guru Gobind Singh Indraprastha University. The Committee took note of the views of all stakeholders with respect to problem areas in the proposed legislation, apprehensions, suggestions etc. Detailed questionnaire were forwarded to all these stakeholders for their response, apart from forwarding two detailed questionnaires and a copy of the issues raised during the deliberations to the Department of Higher Education for their comments. Feedback received from the Department and the stakeholders has proved to be of immense help to the Committee in formulating its views on the various provisions of the Bill.

2.9 Committee's attention has been drawn by State laws prohibiting malpractices in Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra and Kerala. On a specific query about the impact of these enactments, the Committee was given to understand that they have failed to comprehensively address and provide remedies for all unfair practices resorted to by institutions operating there. The Committee was also informed that issues like self-disclosure of infrastructure, admission procedure, details of faculty, fee structure etc., misleading and false advertisements, refund of fees in case of student not pursuing admission and maintenance of admission related records which are missing in the State laws have found place in the proposed central legislation. The Committee also made a comparative analysis of State laws *vis-a-vis* the proposed legislation. The Committee observes that it is true that the State laws cannot be considered comprehensive enough when compared with the present Bill. However, there are certain provisions in the State laws which need to be reflected in the central legislation also to make it more effective. The Committee has, accordingly, made recommendation in this regard in certain clauses in the latter part of the Report.

2.10 The Committee had the opportunity to interact with the Chairman of the UGC on 28 October, 2010. This was followed by sending of a detailed questionnaire on the Bill and other allied aspects to UGC. Both the interaction with the Chairman, UGC and feedback received on the questionnaire has proved to be of immense help to the Committee in its analysis of the Bill. In his opening remarks, Chairman, UGC categorically stated that the Bill in its present form had not been sent to the Commission. Although comprehensive views of UGC on the Bill have not been sought by the Department, it had been eliciting opinions and formulating views with regard to some of the specific unfair practices prevalent in Universities/institutions.

2.11 The Committee was given to understand that participation of private sector in higher education through Deemed to be Universities, State Private Universities, self-financed colleges and self-financed courses has led to prevalence of certain undesirable practices. UGC (Establishment of and Maintenance of Standards of Private Universities) Regulations, 2003 and UGC (Institution Deemed to be Universities) Regulations, 2010 have limitations and do not give powers to UGC to effectively deal with erring universities. Accordingly, a Central law for prompt and effective deterrent action was the need of the hour. It was informed that the most common violations being made, particularly by private institutions related to charging of high fees, non-refund of fees in case of withdrawal of admission by students, non-return of original certificates, awarding of unspecified degrees, starting unapproved study centres/off campus centres outside their jurisdiction.

2.12 On a specific query with regard to complaints being received about unfair practices in Universities and action taken thereon by UGC, data pertaining to the period from 2007 to 2010 furnished by it clearly establishes the fact that majority of the Universities have failed to send any response whatsoever. One can well imagine the plight of students concerned. Committee's attention was drawn to relevant provisions of UGC Act (Sections 14 and 24) whereunder UGC can withhold grants and impose penalties. However, a fine of Rs.1000/- under section 24 for awarding

unspecified degrees or running a fake institution cannot be considered a deterrent for erring institution. Same is the position with regard to the provision regarding withholding of UGC grants in case of self-financing institutions not getting any grants from UGC. In such a scenario, it was emphasized that while the need for a central regulatory law was paramount, UGC also needed to be strengthened. The only power available with UGC at present is to send a review committee once a private state university is set up. Subsequently, reports pointing out the strengths and deficiencies are sent to such universities for compliance, put on the website and State Governments also duly apprised and there the matter ends.

2.13 Another issue highlighted by the UGC, Chairman pertains to the fee structure prevalent in the State Private Universities and Deemed to be Universities. In the absence of any well-defined norms, fee structure has remained to be quite high. The solution suggested for this persistent problem was either the setting up of State Level Fee Committees in all the States, presently confined to four or five States only or UGC being empowered to set up a Committee for settling the fee structure for universities. The Committee was informed that action had been initiated in this direction by UGC. A Committee had already been constituted by UGC for framing norms for fixing and regulating fee structure in colleges and universities. Secondly, UGC (Institutions Deemed to be Universities) Regulation, 2010 also contained provision for regulation of fee.

2.14 Representatives of AICTE, the primary regulatory body for technical education in the country appeared before the Committee on 14 February, 2011. A detailed questionnaire was also sent to AICTE for their response. When asked to give an idea about the kind of unfair practices resorted to by technical institutions, the following were highlighted:

- Excess fees charged besides the tuition fee under pretext of providing extra facilities
- No refund of fees based on the prevalent rules
- Levy of fines without valid reasons
- Withholding of certificates
- Withholding of results
- Disparities in what is mentioned in the prospectus and what is actually provided in the Institution.

2.15 Committee was informed that AICTE had statutory powers to take all necessary steps to prevent commercialization of technical education, to fix norms/guidelines for charging tuition and other fees, to lay down norms/standards for courses, curricular, physical and instructional facilities, staff pattern/qualifications, quality instructions, assessments and examinations and provide guidelines for admission of students. However, the jurisdiction for implementation of the same was through the University system and the State Higher Education System. Hence, implementation sometimes becomes long drawn and probably ineffective.

2.16 Medical institutions are also proposed to be brought under the ambit of the proposed legislation. The Committee, accordingly, held deliberations with the representatives of the Ministry of Health and Family Welfare and Board of Governors, MCI on 28 October, 2010. Welcoming the proposed legislation, Secretary, Ministry of Health and Family Welfare pointed out that a Central law was essential to curb the unfair practices being resorted to by the private medical colleges. On a specific query about coverage of unfair practices under the proposed legislation, the Secretary was of the view that while most of the unfair practices were covered, irregularities related to faculty and conducting of examinations also needed to be brought under the Bill.

2.17 The Committee was also given an idea about two major reforms being contemplated by MCI in consultation with the Ministry. One was the proposed Common Entrance Test for admission

in medical colleges which would go a long way to make a fair and equitable selection of students. The other reform related to the fee structure which was varied from state to state as far as private colleges were concerned. It was felt that a central law in this regard would be desirable. It was stressed that possibility of a kind of mechanism in the form of a Committee of Secretaries of Finance, Education, Medical Education and Technical Education with experts from concerned field for monitoring fee structure could also be explored.

2.18 Committee's deliberations would have remained incomplete without having an idea about the viewpoint of Societies/Trusts as well as individual institutions about the viability of the proposed legislation, relevance/need of the various provisions, their impact, need for modification, likely problem areas and other allied aspects. The Committee is of the firm view that the private sector has played a major role in the massive expansion of higher education in the recent years in the country. The Committee, accordingly, held a series of meetings in Delhi as well as during its study visit to the southern States. A detailed questionnaire was also sent to the major stakeholders with whom the Committee had interacted. The Committee was given to understand that broadly speaking, the Bill was considered to be a welcome step. The Committee, however, observed that representatives of private sector not only had a number of reservations about the proposed legislation, its impact, problem areas etc. but there was also a very visible undercurrent about it being somewhat targeted against the private higher educational institutions. The Committee had also taken note of a number of valuable suggestions given by them, incorporation of which in the proposed legislation is certainly going to strengthen the same. While suggestions pertaining to specific provisions of the Bill have been dealt with in the relevant part of the Report, the Committee would also like to examine at length the apprehensions of representatives of private institutions in the succeeding paragraphs.

2.19 Doubts were raised about the constitutional validity of the Bill by the Indian Council of Universities representing a number of private universities. It was pointed out that the objective of the Bill was to regulate charging of donations and capitation fee, admission fee and other charges, admission processes, advertisement and promotion and various other acts and operations of universities, besides institutions of technical and medical education. However, Parliament was categorically debarred by the Constitution to enact a law for regulation of universities because the subject 'regulation of universities' was specifically excluded from the legislative powers of the Parliament *vide* Entry 44 of the Union List which reads as follows:

"Incorporation, regulation and winding up of corporations, whether trading or not with objects not confined to one State, but not including universities."

Not only this, 'Regulation of Universities' was listed in Entry 32 of the State List which reads as follows:

"Incorporation, regulations and winding up of corporations, other than those specified in List I and universities, unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies."

2.20 It was contended that universities cannot be brought under the purview of the proposed law because Parliament was categorically debarred to legislate on subjects "incorporation, regulation and winding up of universities" while States are expressly empowered to legislate on these subjects. It was also pointed out that although education is a concurrent subject as per Entry 25 of List III, however, power to regulate universities still cannot be exercised by Parliament because this subject is categorically excluded from the legislative powers of Parliament *vide* Entry 44 of Union List. Entry 66 of Union List gives Parliament a limited jurisdiction *i.e.* to legislate only for coordination and determination of standards that too in institutions of higher education only and not for

universities. Another argument put forth was that Parliament was competent to legislate for universities which were in existence at the commencement of the Constitution as BHU, AMU, Delhi University, established in pursuance of article 371 E and any other institution declared by Parliament by law to be an institution of national importance by virtue of Entry 63 of Union List. For the remaining universities, power to legislate vested with the concerned State only.

2.21 When this issue was taken up with the Department, the following clarification was given:-

“Entry 25 in List III in the 7th Schedule of the Constitution which was inserted *vide* the Constitution (Forty second Amendment) Act, 1976 (*w.e.f.* 3/01/1977) reads as under:

“Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

Entry 66 of the Union List (List I) reads as under:-

“Co-ordination and determination of Standards in institutions for higher education or research and scientific and technical institutions.”

The above-mentioned two entries leave no scope of doubt about the competence of the Parliament to legislate on matters relating to education after the above-mentioned amendment. Entry 25 of List III has the effect of modifying Entry 32 (List II), as in items under List III, Parliament has precedence. Moreover, the present proposal does not in any way abridge the legislative competence of States in terms of Entry 32 of List-II. Therefore, the legal infirmities pointed out in the question above which were relevant before the Constitution was amended in 1976 are no more so now, since education has been transferred to the Concurrent List. Entry 44 clearly excludes universities and, therefore, is not relevant to the present proposal.”

2.22 The Committee is of the view that reservation of the Indian Council of Universities about the constitutional validity of the proposed legislation does not seem to be well-placed. As rightly pointed out by the Department, after insertion of Entry 25 in List III in 1976, Parliament is fully competent to legislate on matters relating to higher education including universities. The Committee would also like to point out that enactment of this legislation is neither going to affect the autonomy of states or independent functioning of individual universities/institutions. One must also not forget that the main objective of the proposed legislation which is primarily disclosure based, is curbing of unfair practices being resorted to by higher educational institutions against our young students. It has also been brought to the notice of the Committee by many stake-holders that by and large state laws operational in 4-5 states relating to capitation fees and admission procedures have not proved to be effective enough. In such a scenario, education being in the Concurrent List, initiative taken by the Department for formulation of a Central Law should be considered a welcome step by all concerned.

2.23 Another issue raised by associations/organizations was their apprehension about the negative impact on investors and philanthropists wishing to set up higher educational institutions being deterred by the stringent legal and penal provisions incorporated in the Bill and the risk of their being jailed. **The Committee would like to set at rest all such doubts as the intent underlying the Bill is not to dissuade any genuine private promoter from setting up institutions. It is a well-known fact that private sector has played a major role in the unprecedented growth of higher education in the country in the recent years. Government is also aware that a substantial part of investments in the higher education sector has to come from private initiatives only, if the GER has to be increased to 30**

per cent by the year 2020. The Committee would like to emphasize that the Bill being disclosure based is not going to dissuade good and noble promoters. Its main purpose is to make the entire process of education in higher educational institutions more transparent in the interest of students.

2.24 Committee's attention was persistently drawn to the fact that there was no need for having such an enactment as laws of land already existed and were sufficient to deal with unfair practices in higher educational institutions. It was also pointed out that a separate law in addition to the existing laws in force was not desirable as multiple laws/regulations were much difficult to be implemented and tended to create litigations among stakeholders. In this regard, the Committee was informed by the Department that there was presently no law which dealt with the cases of malpractices comprehensively in higher education sector. No existing law in the country was directed at prohibiting and punishing malpractices in higher education. Though there were general criminal offences prescribed in the Indian Penal Code (IPC) like cheating etc., every time a case of cheating could not be established. Section 24 of the UGC Act provided for a penalty of Rs.1000/- only. It did not have any criminal penalties which were required in case of unfair practices and was consequently ineffective in dealing with unfair practices. Secondly, increased litigation arising out of enactment of legislation would be handled through the Educational Tribunals, thereby preventing over-burdening of normal courts.

2.25 Another view-point put forth by some of the associations representing private educational institutions was that students were well-covered under the definition of the term 'consumer' as per section 2(d) of the Consumer Protection Act, 1986. Besides, almost all malpractices likely to affect the interests of students were covered under the definition of the terms 'defect' and 'deficiency' given under section 2(t) and 2 (g) of the Act. The Committee would like to point out that the proposed legislation and the Consumer Protection Act cannot be placed on the same footing due to the following differences inherent in them:

- The Consumer Protection Act, 1986 deals with individual matters of alleged deficiency in service whereas the proposed legislation also provides for class action.
- The nature of liability in respect of matters adjudicated/proposed to be adjudicated under both laws is different.
- The cause of action in case of consumer disputes arises out of a retrospective act. The proposed legislation is intended more for the purposes of pre-empting or preventing malpractices before they happen.
- Even if a few of the unfair practices may be redressed through the consumer dispute resolution, they cannot be comprehensive enough to impact the entire higher education spectrum.
- The Consumer Commission is not authorized under law to adjudicate matters specified to be civil or criminal offences.

The Committee hopes that the clarification given by the Department would clear all the doubts raised by the private sector organizations.

III. ISSUES NOT COVERED IN THE BILL

3.1 The Committee has observed that there are a number of issues/areas which have either not been included in the Bill or have remained inadequately covered. These aspects were pointed out by many stakeholders not only in the written memoranda submitted by them but also highlighted during their interaction with the Committee.

Scope of the Bill

3.2 It has been observed that the scope of the Bill has been restricted to technical and medical institutions and universities including deemed universities. It excludes other universities, colleges for general and professional education and other institutions of higher general education, including, notably, colleges for teacher education. It has been clarified by the Department that colleges affiliated to these universities will also be covered as may be seen in sub-clause (2) of clause 2 of the Bill where a reference to definitions in the UGC Act, 1956 has been made. The Committee has also taken note of list of 13 statutory authorities furnished by the Department which are to be covered under the definition of 'appropriate statutory authority' given in clause 2 (c) of the Bill.

3.3 **The Committee observes that the National Council for Teacher Education has been left out from this list. The definition of 'institution' as given in clause 2(e) is not very specific. The Committee is of the firm view that instances of unfair practices need to be curbed in all categories of higher educational institutions be it Central Universities, deemed to be universities, State Universities, all higher educational institutions including institutions of national importance. All such institutions should have the same governance pattern. Any ambiguity in this regard should, therefore, be removed from the Bill, by having specific definitions at the appropriate place. The Committee would like to draw the attention of the Department to the definitions of terms, 'higher educational institution' 'college' and 'Central Educational Institution' as given in the Educational Tribunals Bill. The Committee also takes note of the clarification given by the Department with regard to coverage of institutions under the proposed legislation. The following categories have been listed by the Department which are mandated to be covered:**

- All medical institutions recognized by MCI, DCI, CCIM, INC, Pharmacy Council, whether private or Government.
- All institutions imparting technical and professional education leading to award of a degree/diploma in engineering and polytechnics recognized by AICTE whether coming under the University system or not.
- All Universities including Deemed-to-be Universities, whether private or public.
- All institutions/colleges imparting any kind of education (general or technical) which are part of the University system, covering all affiliated, constituent colleges/campuses of Universities.

3.4 **The Committee strongly feels that it would be appropriate to have a very specific definition about the coverage of all categories of institutions intended to be covered under the ambit of the proposed legislation. The Committee, therefore, is of the view that detailed definition of institutions as given under the Educational Tribunals Bill, 2010 should be the benchmark of this legislation. One must not forget that one of the powers assigned to the Educational Tribunals is to handle matters relating to use of unfair practices by any higher educational institution. Necessary modifications may be carried out accordingly.**

3.5 The Bill is primarily focused on unfair practices resorted to against students. However, it is a well-known fact that unfair practices can also be there where the victims are teachers and other employees of an institution. On a specific query in this regard earlier, the Department in its written submission informed that the present Bill was limited to providing a legal framework for redressing students and parents grievances arising out of unfair practices adopted by the technical, medical institutions and universities. However, information disclosed by the institutions under clause 5 would also lend credence to the genuine grievances of employees and teachers since their emoluments and qualifications would become public and any contravention thereof will be easy to

establish before a State Tribunal, which is envisaged to be the forum for grievance redressal of teachers and employees.

3.6 The Committee is not convinced by the clarification given by the Department. First and foremost issue which needs to be kept in mind is that employment of unqualified teachers needs to be considered as an unfair practice in the context of students who would obviously be deprived of their right to quality education. Unfair Practices cannot be restricted to remuneration in the context of teachers/employees. The Committee would like to draw the attention of the Department to the following pertinent observation made by the Yashpal Committee:

“In many private educational institutions, teachers are treated with scant dignity. There are many terrible instances of faculty being asked to work in more than one institution belonging to the management; their salary being paid only for nine months; actual payment being much less than the amount signed for; impounding of their certificates and passports, compelling them to award pass marks in the internal examination to the favourites.”

3.7 The Committee would also like to point out that the Educational Tribunals Bill, 2010 is mandated to provide effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stakeholders including students. It would have been appropriate if specific provisions relating to unfair practices where teachers/employees are the victims were also incorporated in the Bill on the pattern of what is envisaged for students. The Committee, accordingly, recommends that necessary additions/modifications may be made at the relevant places in the Bill.

Definition of the term ‘Unfair Practices’

3.8 The Bill in its present form does not have a specific definition of the term ‘unfair practices’. During its interactions with various stakeholders, attention of the Committee was drawn to a large number of unfair practices to which students fall a victim as indicated below which have not been covered in the proposed legislation :-

- Charging of capitation fee.
- Charging of exorbitant fee.
- Lack of transparency in conducting the entrance test.
- Recruiting faculty without qualification.
- Recruiting faculty with low salary.
- Exploitation of teachers through various means.
- Recruiting faculty on part time basis.
- Recruiting faculty without aptitude for teaching.
- Allowing students to take examination without adequate attendance.
- Malpractices and unfair practices in evaluation.
- Advertising disproportionate infrastructure compared to actual infrastructure.
- Exorbitant prospectus fees.
- Retention of tuition fees, exam fees, without valid reason.

- Accepting various fees without providing receipts.
- Admitting ineligible students.
- Allowing students to copy.
- Victimization of students, specially those belonging to SC/ST/OBC and weaker sections of society.

3.9 When asked to clarify their stand on this issue, the Department informed that after careful consideration, the Central Government came to the conclusion that an exhaustive list of unfair practices was neither desirable nor practicable. New unfair practices may be observed over time. The Bill in its present form may be allowed to come into force and after a reasonable length of time, modifications may be considered, if so required.

3.10 **The Committee observes that all the unfair practices are not covered in the Bill at present and accordingly penalties have been prescribed only for specific unfair practices as enumerated therein. Clause 14 relating to ‘Penalty for which no specific provision is made under the Act’ can take care of such unfair practices but that would be to a limited extent only. It also needs to be kept in mind that quantum of penalty in this clause extending to five lakh rupee/ten lakh rupees is very less when compared with specified unfair practices. Secondly, the Committee’s attention has been drawn to the provision of Educational Tribunals Bill, 2010 which lays down that State Educational Tribunals would be empowered to handle only those matters relating to use of unfair practices by any higher educational institution which have been specifically prohibited under any law for the time being in force. In such a scenario, the Committee foresees situations where students become victim of unfair practices not specifically covered in the present Bill and thus denied any relief under the Educational Tribunals Bill. Clause 14 of the Bill does not serve the purpose as there may be unfair practices having higher level of victimization which would need specific deterrent action. The Committee, therefore, is of the firm view that an enabling clause taking care of unspecified unfair practices needs to be incorporated in the Bill.**

Bill-disclosure-based-impact thereof

3.11 The proposed legislation has been termed as a disclosure based one emphasizing heavily on transparency. The Committee, however, would like to point out that even though self-disclosure of information by institutions is a positive trend but there is policy constraint with respect to some of the unfair practices which may be justified after being covered in the Bill. Clause 5 enumerates the various details which are to be included in the prospectus. Clause 9 provides penalty for doing contrary to information in prospectus. However, examination of clause 5 reveals that while details like intake capacity, eligibility criteria of students and educational qualifications are to be as per statutory authority specifications, details relating to fee and other charges, the percentage fee to be returned, admission procedure, details of teaching faculty, salary structure do not have such a reference. **The Committee, accordingly, recommends that all the details to be given in the prospectus should have a reference to the statutory specifications/norms.**

Handling of Frivolous Complaints

3.12 The Committee, while deliberating on the Bill came across apprehensions expressed by the private stakeholders with respect to frivolous complaints which may unnecessarily drag the institutions into multiple litigations. **The Committee observes that there is a specific provision i.e. clause 45 regarding ‘Dismissal of frivolous or vexatious complaints’ incorporated in the Educational Tribunals Bill which adequately takes care of apprehensions of private stakeholders.**

Grievances Redressal Mechaism

3.13 The proposed legislation seeks to protect the interests of students by prescribing specific procedures and designating authorities for providing relief to them in the event of their becoming a victim of unfair practices. While the Committee appreciates the initiative taken by the Department, it would like to draw its attention to viability of this prescribed procedure. Nobody would deny the fact that time factor is very important, wherever any kind of relief is to be provided and this becomes more crucial in the case of students. The Committee, therefore, strongly feels that some kind of grievance redressal mechanism needs to be in place for the students before they approach the State Educational Tribunal.

3.14 On a specific query in this regard, such a proposal was found acceptable by the Department. Committee's attention was, however, drawn to the fact that such an internal mechanism exists in many institutions and has been referred to in the Bill on Educational Tribunals, where the Tribunals can be approached only after the internal redressal mechanism fails.

3.15 The Committee would like to point out that the Department's response clearly indicates that all the institutions in the country do not have such an internal mechanism at present. Secondly, perusal of clause 17 read with definition of the term 'service rules' as given in clause 3 (1) (X) of the Educational Tribunals Bill, 2010 pertaining to teachers or employees indicates that apparently students are not covered under this provision. The Committee observes that there needs to be a mechanism in place at the institution/university level in the form of a committee having independent members also which has the power/authority to examine any complaint/grievance in the first instance and resolve the dispute amicably. Only in the event of a stalemate or either party remaining dissatisfied, process for imposing of penalties may start. This will be in the interest of both the students and institutions as the students would not have to approach the tribunal for redressal of their complaints and it will also curb frivolous complaints against the institutions. Further, it would also help in lessening the burden of State Educational Tribunals. The Committee opines that the Department should think of such a middle path in the interest of both the students and institutions.

IV. The Committee makes the following observations/recommendations on some of the provisions of the bill.

CLAUSE 1 : SHORT TITLE, EXTENT AND COMMENCEMENT

4.1 Sub-clause (3) dealing with the commencement of the Act reads as follows:-

"It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State."

4.2 The Department has justified the different dates for implementing the different provisions of the Act by different States for the reason that there are provisions in the Bill which make a reference to State Education Tribunals (SET) and setting up of SETs being in the domain of the State Governments, no uniform date can be prescribed for coming into operation of all State Educational Tribunals. This has necessitated the proposal under the present Bill to implement different provisions by different States on different dates.

4.3 Justification given by the Department does not seem to be very convincing. The Committee would like to point out that the proposed legislation in its Chapter II deals with

‘Conducting tests for Admission, Publication of Prospectus and Prohibition of collection of Capitation Fee etc. and Chapter III pertains to ‘Imposition of Monetary Penalties’ and also adjudication of penalties by the concerned State Educational Tribunals. The Committee is aware of the fact that no uniform date can be prescribed for coming into operation of all State Educational Tribunals. The Committee, however, is of the view that a specific period of one year or six months can be laid down for setting up of State Educational Tribunals. So far as Chapter II of the proposed legislation is concerned, the same needs to be implemented immediately on being notified in the Official Gazette. The Committee, accordingly, recommends that necessary modifications may be made in clause 1(3) of the proposed legislation and also in the relevant clause of Educational Tribunals Bill, 2010.

V. CLAUSE 2 : DEFINITIONS

5.1 Clause 2(1)(d) of the Bill defines ‘capitation fee’ as :-

“capitation fee” means any amount, (by whatever name called),-

(i) demanded or charged or collected, directly or indirectly, for, or, on behalf of any institution, or paid by any person in consideration for admitting any person as student in such institution; and which is in excess of the fee payable towards tuition fee and other fees and other charges declared by any institution in its prospectus for admitting any person as student in such institution; or

(ii) paid or demanded or charged or collected, by way of donation, for, or , on behalf of any institution ,or paid by any person in consideration for admitting any person as a student in such institution.

It has been pointed out that the Supreme Court in 2002 T.M.A Pai judgement had ruled that the fees charged by private unaided educational institutions could be regulated. Also, while banning capitation fee, it allowed institutes to charge a reasonable surplus. However, in 2003, the Supreme Court in its judgement in the Islamic Academy of Education and others vs State of Karnataka ruled that the fee structure in professional courses shall be approved by a committee in order to curb the charging of capitation fee and profiteering. States such as Tamil Nadu, Andhra Pradesh, Kerala, Karnataka and Maharashtra enacted laws to set up such committees to approve the fee structure in professional educational institutions. However, there have been cases where these committees have determined the fee structure by only taking into account the affordability of the parents of the students without taking into account the financial viability of the institutes. The National Knowledge Commission in its report on reforming higher education recommended that universities should have the autonomy to fix their own fees. It also recommended that needy students should be helped through fee waivers, scholarships, fellowships and student loans. Presently, charging of capitation fee is banned by a series of Supreme Court judgments. However, the practice has not abated. The YashPal Committee Report stated that regulatory agencies have not been able to come to grips with the problem mainly due to deficiencies in enforcement instruments. Since the Bill does not change the enforcement mechanism for curbing capitation fee (other than providing for penalties), apprehensions were expressed about whether it would be successful in curbing the practice of capitation fee.

5.2 **The Committee is very well aware with the prevalent trend of capitation fees in the higher educational institutions especially in medical and engineering colleges. During the study visit of the Committee, it was pointed out by students that admissions did not take place on merit but on the basis of capitation fee. In the name of ‘other charges’, capitation fee was being asked from the students at the time of admission. The Committee, therefore, believes that “other charges” to the extent possible should be specified in the Act itself so**

that there is no scope left for the institutions to demand “capitation fee” in the garb of other charges from the students. The Committee also takes note of a suggestion that amount of excess of tuition fee should be specified so as to identify it as capitation fee. Ten percent excess of tuition fee can be the benchmark for identifying ‘capitation fee’. The Committee is of the view that the definition of ‘capitation fee’ be made more specific so as to curb the malpractice of capitation fees demanded by the institutions thereby protecting the interests of students and their parents.

5.3 Clause 2(1)(1) defines State Government as:-

“State Government “, - (i) in relation to an institution situated in one state, means the State Government of that State; (ii) in relation to an institution situated in more than one State, means the State Government of a State in which the main campus of such institution is situated.

5.4 It has been brought to the notice of the Committee that the “State Government” in relation to an institution situated in more than one State means the State Government of the State in which the main campus of the institution is situated. The ‘main campus’ is not defined in the Bill. An institution may have its branches in more than one State, then the State Government shall be the respective State Government in which such institution is situated. It was apprehended that such a definition of ‘State Government’ may lead to confusion.

5.5 The Committee finds the definition of the term ‘State Government’ to be appropriate. The institution/university can follow the policy of one State only. Accordingly, it may be as per the State Government where main campus of the institution/university is located.

VI. CLAUSE 3 : PROHIBITION OF ACCEPTING ADMISSION FEE AND OTHER FEES AND CHARGES WITHOUT RECEIPT

6.1 Clause 3 prohibits accepting admission fee and other fees and charges without receipt. It reads as follows:-

3(1) No institution shall, for admission in respect of any seat in any course or programme of study conducted in such institution, accept any payment towards admission fee and other fees and charges,-

(a) other than such fee or charges for such admission as declared by it in the prospectus for admission against any such seat; and

(b) without a proper receipt in writing issued for such payment to the concerned student so admitted in such institution.

(2) No institution shall charge any fee for an admission test other than an amount representing the reasonable cost incurred by it in conducting such test.

6.2 According to the Department generally exorbitant fees are charged by the institutions without disclosing them in the prospectus. Students come to know of the extra fees only after they gain admission. After that they have no option except to pay up or opt out. In both the cases, they are aggrieved. It was pointed out that the present legislation will make it impossible for any institution to charge any amount which is not disclosed in the prospectus. The present trend will get automatically arrested once the disclosure of fees is made mandatory.

6.3 Majority of the stakeholders supported the provision of the Bill regarding prohibition of accepting admission fee and other fees and charges without receipt. It was admitted that all the money that was collected by the institution needed to be mentioned. Indirect collection should be curbed and therefore all fees should be collected with receipts. However, there have been mixed

responses with respect to revision in the fee structure. State Government of Tamil Nadu was not in favour of practice of increasing fees after disclosing the fees in the prospectus and then taking admission based on that. Any increase could only be allowed from the next academic year. Kerala State Higher Education Council pointed out that fee fixed should be inclusive of all fees and institutions should not be allowed to revise the fee fixed at the time of admission till the completion of the course. Supreme Court directive that the fee fixed for a course should be revised only once in three years should also be complied with. UGC was of the view that once the fee was declared in the prospectus as fixed by the concerned authority for the specified period, no alteration should be permitted during such specified period. Ministry of Health & Family Welfare also endorsed the above provision.

6.4 A large number of associations representing private institutions, however, had strong reservations on this provision. Committee's attention was drawn to the following factors which generally led to revision in the fee structure:--

- sudden increase in dearness allowance by the Government or levying of additional/enhanced fee by the affiliating universities sometimes requires the increase in fee structure.
- escalating maintenance of institutions and upward revision of pay for the staff.
- increase in boarding expenses according to market variation, unified transportation (cost of diesel).
- administrative expenses (to envisage the maintenance of educational implements or lab equipments to an updated status) inclusive of library facilities.
- purchase of new software.
- additional fees/charges could be visualized in respect of value-added courses or services provided by the University.
- other unforeseen circumstances.

6.5 The Department strongly advocated the above provision as in its opinion, institutions would be violating the proposed law if they were to charge more than what has been fixed by the State Level Committees. Institutions and management are free to arrive at a fee structure (if there is no regulated fee by the State Level Committee) before publishing the prospectus. The institutions, both Government and private can make informed decisions about inflation, extra cost likely to arise out of expected investments and build it in their fee structure in the beginning itself. The managements will be free to determine the fee structure for the next academic year and may provide for a revision. It was pointed out that freedom to revise fee in the middle of the academic year would lead to unnecessary exploitation of the students.

6.6 **The Committee notes that a number of pertinent issues pertaining to admission fee and other fees and charges were raised before the Committee like:-**

- **There is a need for having a mechanism for deciding the fees to be charged by the Institutions/Universities specially in view of very high fees being charged by private universities. One option given was to fix the upper limit for various courses. This can be fixed by the State Fee Regulation Committees and where such Committees are not there, fees can be fixed higher on a justified basis *i.e.* ten per cent higher than fixed by State Committees.**
- **Other charges need to be specified.**
- **The fees so fixed can be for a year or can be revised only after a minimum period *i.e.* three years.**

6.7 The Committee observes that massive expansion of higher education in the country with private sector playing an active role has led to a situation where regulation of fee structure is not evident in a very large number of institutions. This problem has become so acute that in the name of autonomy, private universities and deemed universities are charging exorbitant fees. No rationale/criteria proportionate to the infrastructure and quality of education made available to students in such institutions is made applicable as decision-making bodies of such universities have all the powers in such cases. As a result, there are private institutions affiliated to State Government Universities providing quality education but having a reasonable fee structure laid down by the State Universities. There are age-old Central Universities where nominal fees are being charged for the last so many decades. In contrast, there are private universities/deemed universities which are free to charge any amount of fee and other charges in the name of providing best facilities. This disturbing practice has been commented upon by the Yashpal Committee in the following manner:

“Many private institutions charge exorbitant fees (beyond the prescribed norms) in the form of many kinds of levy (not accounted for by vouchers and receipt) and are unable to provide even minimum competent faculty strength.....since the norms for fixation of fees are vague, the quantum of fees charged has no rational basis “

Similar observations have been made in the Report of the Committee for Review of Existing Institutions Deemed-to-be-Universities as indicated below:

“Most of the deemed universities have fee structures considerably higher than those recommended by the official fee structure committees established according to the Hon’ble Supreme Court directive. Many of them created their own fee structure committees to justify the exorbitant fees.”

6.8 On this issue bring raised with the Department, especially in the context of any guidelines at the Central/State level whereunder broad criteria prescribing the quantum of admission fee and other related charges has been fixed to be followed by both Government and private institutions, a very discouraging response was received. The Committee was informed that at present, there was no central legislation providing for fee fixation and regulation.

6.9 Committee’s attention was drawn to the Supreme Court judgment of Islamic Academy which provided for two committees for regulating admission and determining fee structure as regulatory measures aimed at protecting the interest of the student community which was upheld in the P.A. Inamdar judgment also. When the Committee sought specific information about status of State Fee Regulating Committees set up upto now, the required information was not readily available with the Department. Status Report sought from the States on the directions of the Committee on 22 October, 2010 revealed that only two States responded with Goa having such a Committee and no such committee being set up in Mizoram so far. Further, the Committee was given to understand that the Department was only informally aware about States like Tamil Nadu, Kerala, Maharashtra, Andhra Pradesh and Karnataka having constituted those Committees with information about the effectiveness of these Committees being not readily available.

6.10 Committee’s concern about the present trend of charging of exorbitant fees and remedial measures taken therefor elicited the following response from the Department:-

“Most of the time the exorbitant fees are charged by the institutions without disclosing them in the prospectus. Students come to know of the extra fees only after they gain admission. After that they have no option but to pay or opt out. In both cases, they are aggrieved. The present legislation will make it impossible for any institution to charge any amount which is not disclosed in the prospectus. The present trend will get automatically arrested once the disclosure of fees is made mandatory.”

6.11 The Committee finds the above stand of the Department incomprehensible. The element of helplessness and total lack of initiative on the part of the Department inspite of there being a specific Supreme Court directive is not acceptable to the Committee. Charging of exorbitant fees with no rational basis whatsoever is an unfair practice which needs to be tackled without any further delay. The Committee wonders how the mere fact of putting the details of fees in the prospectus will justify the fees inspite of their being exorbitant or irrational. The Committee foresees another emerging scenario on the enactment of such a legislation. Charging of any amount of fees would become unchallengeable once the same are included in the prospectus. The Committee would appreciate if Supreme Court observations that State Committees regulating admission procedure and fee structure have to continue only as a temporary measure until the Central Government or the State Governments are able to devise a suitable mechanism and appoint a competent authority, are acted upon in the real sense. Proposed legislation is the right opportunity for the Central Government to take the much-awaited initiative. Either a workable mechanism for deciding the fee structure for various professional courses or laying down minimum and maximum limit for fees for different categories of courses based on the ground realities needs to be worked out. In the absence thereof, the Committee can only emphasize that the students and their parents will continue to become the victim of unfair practice of exorbitant and irrational fees, inspite of this legislation being enacted.

6.12 The Committee would also like to point out that the absence of any specific definition of the term 'other fees and charges' will leave the ground open for the managements of higher educational institutions to ask for any kind of charges from students as they deem fit.

6.13 Committee's attention has been drawn by two States Acts which specify the kind of charges to be paid by the students. Kerala Self Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 specifies the following categories of fees/charges: tuition fee, library fee, caution deposit, development fee and refundable deposit. Similarly, the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 includes the following fees: - Tuition fee, Term fee, Library fee and security deposit, Lab fee and security deposit, Gymkhana fee, Examination fee and Hostel fee, mess charges. This can be the benchmark for the specification of charges to be defined in the Bill.

VII. CLAUSE 4 : PROHIBITION OF ADMISSION WITHOUT SPECIFIED ADMISSION TESTS OR *INTER SE* MERIT FOR SELECTION OF STUDENTS

7.1 Clause 4 deals with prohibition of admission without specified admission tests or *inter se* merit for selection of students. It reads as follows:-

4(1) In case the appropriate statutory authority has specified the process of selection for admission to any course or programme of study in any institution which includes conducting competitive admission test for ascertaining the competence of any person to pursue such course or programme of study, in that case, no person shall be admitted to such course or programme of study in such institution, except through an admission test conducted by,--

(a) a body as may be notified under this Act by the appropriate authority for conducting such admission tests; or

(b) such institution or a group of institutions if such institution or group of institutions have been so authorized by the Central Government or a State Government or any appropriate authority or by any other authority so authorized and notified to conduct such test.

(2) In case the process of selection for admission to any course or programme of study in any institution including conducting competitive admission test has not been specified under sub-section (1), in that case, no person shall be eligible for admission to such course or programme of study in such institution except through inter se merit to be specified in the prospectus of each institution.

This clause prohibits admission without specified admission tests or inter se merit for selection of students. It further provides that in case the process of selection for admission to any course or programme of study in any institution including conducting competitive admission test has not been specified under sub-clause, in that case, no person shall be eligible for admission to such course or programme of study in such institution except through inter se merit to be specified in the prospectus of each institution.

7.2 The Committee has come across varied reactions with respect to this provision. Attention of the Committee has been drawn to the beneficial aspects regarding having a common entrance exam keeping the interests of the students in mind. Following are the points in favour of having a centralized entrance exam or a common admission test:-

- Common entrance test for all institutions would ensure that only meritorious students get admission.
- multiple exams or entrance tests create confusion for students and also prove to be expensive and burdensome for them. One entrance exam would be more convenient for the students.
- students will have more choice in joining institutions.

7.3 Even though the Bill does not prescribe a common admission test, apprehensions have been expressed by some stakeholders as indicated below:-

- conduct of centralized admission test is not a viable option.
- it will have an adverse impact on the autonomy of institutions/universities.
- entrance tests being made mandatory will further aggravate the exploitation of students through coaching centres.
- centralized entrance tests will result in increasing the number of vacant seats further as the students will be having the option to join institution of their choice.

7.4 When Department's attention was drawn to the above-mentioned apprehensions, it was clarified that the Bill did not prescribe any additional/alternate/new entrance test. It merely provided for following the process determined by the regulatory authority, if there be such a process. The institution can design its own admission procedure following the criteria of merit. For example, since the Government of Tamil Nadu had done away with entrance tests for admission to technical/professional institutions, nothing in this Bill would compel the institutions controlled by the State Government to conduct an admission test. The provisions under consideration also ensure that even when common admission test was not prescribed, inter se merit would have to be observed. Also, a separate adjudication mechanism had been proposed since the management of private institutions tend to resort to unfair practices. Admission would be subject to litigation in Tribunals curbing the present farcial exercise of admissions.

7.5 The Committee has also been given to understand that having a common entrance test and thereby regulating the admission process will not adversely affect the autonomy of institutions thereby allaying the apprehensions voiced. This view has been supported by UGC, AICTE and the Ministry of Health and Family Welfare. Admission test is only the entry point for the students to

get admitted into an institution/university and is not related to the functioning of such institutions/university.

7.6 The Committee takes note of the general feedback which supports the existing position that conduct of entrance exams by State Universities, both private and government, group/association of private institutions or selection through inter se merit should be allowed to continue. Attention of the Committee was drawn to specific provision adopted by State Governments of Kerala and Andhra Pradesh with regard to admission in self-financing professional colleges. In Kerala, in every private college, fifty percent of the total seats are under Government quota to be filled on the basis of ranks in the Common Entrance Test. In Andhra Pradesh, fifty percent of total seats are to be filled on the basis of common entrance test or the qualifying examination.

7.7 The Committee would like to emphasize upon the main purpose of this provision which is to have a transparent admission process based either on entrance test or on inter se merit of students. Once this is accomplished, allegations of admission tests conducted by private institutions being only farcial and also not based on inter se merit of students can be checked in the real sense. The Committee feels that there should be no scope for manipulation/malpractices in conduct of entrance tests. The Committee finds the above provision appropriate enough. However, the implementation mechanism therefore has to be made tamper-free and foolproof. Accordingly, the Committee recommends that effective regulation and monitoring of entrance or admission tests must be done to make the admission process more credible and authentic without infringing the autonomy of institutions/universities.

VIII. CLAUSE 4(3)

8.1 Clause 4 (3) deals with maintenance, exhibition of records of entire process of selection of students and producing the same whenever asked to by the appropriate authority. It reads as follows:-

(3) Every institution referred to in sub-sections (1) and (2) shall,--

(a) maintain the records of the entire process of selection of students including answer sheets of the competitive admission test conducted in respect of the admission of each student;

(b) exhibit such records in its website;

(c) be liable to produce such record, whenever called upon to do so by the appropriate statutory authority under this Act or any other law for the time being in force:

Provided that the records under this clause shall be maintained for a period of one year reckoned from the date of completion of the admission test subject to the condition that where the admission has been questioned in any court of law or tribunal, the records shall be maintained for such period as the court or tribunal may deem fit.

This clause imposes a duty on every institution to maintain the records of the entire process of selection of students (including answer sheets), exhibit such records on its website and produce such record, whenever called upon to do so by the appropriate statutory authority.

8.2 View of UGC on this provision was that availability of records of the entire process of selection of a student including answer sheets may help in bringing more transparency in admission and examination process which is one of the core elements in selection of students in any educational institution. It may help those students also who have not done so well in the examination as they will be able to understand their own shortcomings by looking at the records of examination.

8.3 On the other hand, reservations were expressed about the display of such records on the website. It was also felt that keeping in view the large number of students sitting for entrance tests, practically it may not be feasible to display the entire records on the website. Another viewpoint was that confidential admission records such as answer scripts of the students could not be publicly exhibited on a website as it would violate the privacy rights of individuals.

8.4 The Committee taking note of the reservations expressed by the stakeholders is of the view that it may not be practically possible for an institution to exhibit entire records of the selection of students on the website due to bulkiness of the records which would include answer sheets of the students. Also, the students may not feel comfortable if their answer sheets are publicly displayed for all to see and therefore would violate their privacy. However, the Committee believes that it is appropriate for an institution to maintain entire records of the process of the selection of students and produce the same whenever called upon to do so by the appropriate statutory authority under the Act. This would help in ensuring a transparent and fair process of selection of students.

8.5 Attention of the Committee has been drawn by another related issue. It is a common practice that the main entrance tests are conducted not on individual institution basis but are conducted by either a general authority or one nodal institution designated for the purpose. For example, every year one IIT and IIM act as the nodal body for conduct of exams. Similarly, entrance tests are also conducted by bodies like CBSE. However, the Act envisages that action can be taken only against particular institution. In such a scenario, in the event of any malpractice taking place, it is not clear as to which authority will be held responsible. **The Committee is of the view that the Department should clarify the position of bodies like IIT, IIM, CBSE in this regard, by making required modifications in this provision.**

IX. CLAUSE 5 : MANDATORY PUBLICATION OF PROSPECTUS, ITS CONTENTS AND ITS PRICING

9.1 Clause 5 deals with mandatory publication of prospectus, its content and its pricing. It provides that every institution shall publish and put the same on its website, before expiry of sixty days prior to the date of the commencement of admission to any of its courses or programmes of study, a prospectus containing the details specified in items (i) to (xii) in the clause for the purposes of informing to those persons intending to seek admission to such institution and the general public. The details to be specified in the prospectus are as follows:-

- each component of the fee, deposits and other charges payable by the students;
- percentage of tuition fee and other charges refundable to a student in case he withdraws from the institution;
- number of seats approved by the appropriate authority in respect of each course or programme of study;
- conditions of eligibility including the minimum and maximum age limit of persons for admission as a student;
- educational qualifications specified by the relevant appropriate statutory authority;
- process of admission and selection of eligible candidates applying for such admission and the amount of fee to be paid for the admission test including all relevant information with regard to test or examination for selection of such candidates;
- details of the teaching faculty, including therein the educational qualifications and teaching experience;

- minimum pay and other emoluments payable for each category of teachers and other employees;
- information in regard to physical and academic infrastructure and other facilities including hostel accommodation, library and hospital or industry;
- broad outlines of the syllabus specified by the appropriate statutory authority or by the institution;
- all relevant instructions in regard to maintaining the discipline by students within or outside the campus of the institution, and, in particular such discipline relating to the prohibition of ragging etc;

Clause 5 further provides that every institution shall fix the price of each printed copy of the prospectus, being not more than the reasonable cost of its publication and distribution and no profit be made out of the publication, distribution or sale prospectus.

9.2 UGC as well as Ministry of Health and Family Welfare welcomed the publication of various details in the prospectus and on the website of the institutions. It was pointed out that such a move would not only bring about transparency but also keep the students well-informed. It was also felt that with given technological devices, it would be feasible. However, associations/federations representing private universities and institutions drew the attention to the following practical problem-areas anticipated in the publication of voluminous details in the prospectus and on the website:

- Because of a very large number of faculty members employed by an institution, publication of their educational qualifications/experience details could be impractical.
- Publication of syllabus of all the programmes/courses in the prospectus will increase the number of pages and its cost. Such details could be provided on the website, with reference being indicated in the prospectus.
- Approval regarding details about fees and other charges and intake capacity is received only between May and July, whereas prospectus is issued long before the beginning of the selection process.
- Only eligibility conditions for admission to be included in the prospectus. Details about infrastructure and faculty to be put on the website.

It was also suggested that the institutions should have the option to make midway corrections.

9.3 According to the Department, the prospectus would mean fixation of fees by the institutions and also prevent unscrupulous institutions from making false claims. Further, the purpose of the provision is also to prevent unscrupulous managements from underpaying the teaching faculty which can be prevented by public disclosure. Faculty details are required to be accessible to the general public also for the reasons that the students make informed decision and institutions are deterred from making false claims. The Department submitted that several leading world class universities bring out even printed versions of the information pertaining to high credentials of their faculty along with photographs. Here the provisions is for web publication only which is less cumbersome, with information technology becoming far advanced, the issue of space in the cybersphere is now a non-issue. It is possible now to upload data in PDF without any need for a huge space. While printing of prospectus is optional, publication on the website is mandatory. Even the expenditure on such website will not even be a fraction of what some of these institutions spend for advertising for their institutions.

9.4 Committee's attention was also drawn to the fact that while some of the details to be included in the prospectus had to be as per the prescribed/statutory norms, no such binding was there in the case of fee/deposits/other charges, percentage of tuition fee and other charges refundable to students, admission and selection process, details of teaching faculty. As a result, chances were there that inspite of such details not being as per the prescribed norms, the same could become fully approved/authorized on their inclusion in the prospectus. When this issue was taken up with the Department, it was clarified that all such statutory obligations could be prescribed in the prospectus under sub-clause (xii) whereunder any other information which may be prescribed could be included.

9.5 **The Committee is not convinced by the clarification given by the Department that all statutory obligations could be prescribed in the prospectus under sub-clause (xii) of clause 5(1). The Committee wonders when reference to appropriate statutory authority/prescribed norms can be made with reference to the number of seats, eligibility criteria, educational qualifications, syllabus details, omission of such a reference with regard to fee details, refunding thereof, and admission/selection process of students, details of teaching faculty has been made. The Committee would like to point out that any deviation in respect of such details is likely to hit both the students and teachers. The Committee fails to understand the rationale for putting such vital details under a general sub-clause.**

9.6 **The Committee is, therefore, of the view that till the evolvement of a foolproof mechanism about regulation of fee structure, the minimum requirement of basis/norms/criteria about the quantum of fees to be charged has to be mandatorily mentioned in the relevant clause. The Committee would also like to point out that the term 'other charges' also needs to be made specific by indicating the various components coming under its ambit. Likewise, percentage of fees to be refunded should not be left at the discretion of institutions. The Committee understands that guidelines/norms have already been prescribed by the Department in this regard. A reference to the same can be easily incorporated.**

9.7 **The Committee finds that no serious reservations have been expressed by any stakeholder about publication of proposed details in the prospectus/website except the feasibility of publication of voluminous details of faculty members and syllabus. The Committee is of the view that not only the Bill is disclosure-based, the principle of transparency has to be ensured so as to protect the students from unfair practices. At the same time, the Committee also finds some substance in the contention of the stakeholders about feasibility of including details of syllabus of all the courses and faculty members. The Committee is of the view that keeping the practicability aspect in mind, details regarding fee, number of seats, eligibility criteria for admission and the process of admission/selection and infrastructure need to be given in the printed prospectus which is as per the present practice. However, full details regarding faculty and syllabus can be put on the website.**

9.8 **Another important issue highlighted in this clause was the need for having qualified faculty as per the prescribed norms. There have been many instances where less qualified faculty and even fresh pass outs are engaged by the institutions for teaching. As per this provision, the institution would have to give details of the teaching faculty, their educational qualifications, teaching experience and minimum pay and other emoluments payable for each category of teachers and other employees. However, mere publication in the prospectus by an institution about its faculty which may not be qualified as per norms or even absence of adequate number of faculty can make it justified since the institution has disclosed the information in its prospectus. The Committee, accordingly, recommends that reference about prescribed norms/statutory obligations should be there in respect of faculty details**

also. Secondly, it may happen that a faculty member may leave the institution or a new faculty member may join the institution mid-session. The Committee is of the view that institutions should have the option to make necessary changes in the website in the event of the faculty members leaving or joining.

9.9 The Committee observes that as per the definition of the word 'prospectus' as given in clause 2(1) (i), it can be a publication in print or otherwise, institutions will have the option to give all the details in the prospectus or put them on their website. However, clause 5(1) specifically lays down that every institution shall publish a prospectus containing all the details as enumerated therein. Proviso to this clause also specifies all such details shall have to be put on website. The Committee feels that clause 5 read with the definition of 'prospectus' is somewhat vague as it gives the impression that both printing of the prospectus with full details along with putting the same on the website is mandatory. The Committee would appreciate that element of ambiguity with regard to publication of prospectus and putting of the same on the website is removed by having a precise provision.

X. CLAUSE 6 : PROHIBITION OF CAPITATION FEE

10.1 Clause 6 deals with prohibition of capitation fee. It reads as follows:-

(1) No institution shall, directly or indirectly, demand or charge or accept, capitation fee or demand any donation, by way of consideration for admission to any seat or seats in a course or programme of study conducted by it.

(2) No person shall, directly or indirectly, offer or pay capitation fee or give any donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any seat or seats in a course of programme of study in any institution.

This clause prohibits capitation fee and donations, etc. It provides that no institution shall, directly or indirectly, demand or charge or accept, capitation fee or demand any donation, by way of consideration for admission to any seat or seats in a course or programme of study conducted by it. It further provides that no person shall, directly or indirectly, offer or pay capitation fee or give any donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any seat or seats in a course or programme of study in any institution.

10.2 The Committee observes that clause 6(1) will not cover fully such persons who may act as agents or middlemen collecting capitation fee on behalf of the institutions. On a specific query in this regard, the Committee has been informed that the present Bill enables action being taken against any person who misleads students. Clause 8 provides that no institution or person authorized shall issue or publish any advertisement making false claims about recognition, academic and infrastructure facilities etc. It was also informed that clause 13 provides for a penalty of Rs.50 lakhs as well as prosecution in case of untrue advertisements issued in violation of clause 8.

10.3 The Committee fails to understand how agents or middlemen could be covered under clauses 8 and 13. Both these clauses pertain to misleading/untrue advertisements given by institutions or persons authorized by them and action to be taken against the institution. The Committee would like to point out that demand for capitation fee is not done through advertisement. This activity is always done in a dubious manner without giving any publicity whatsoever. The Committee also observes that demanding of capitation fee by any institution is strictly prohibited under clause 6 and action is liable to be taken against an erring institution as envisaged in clause 10.

10.4 The Committee recommends the Department to take into consideration the provision in this regard as mentioned in State laws which are very clear and specific so that not only the institutions but also any person who is in charge of or is responsible for the management demanding capitation fee or donation for admission to any course or programme of study come within the ambit of the legislation and action may be taken against them. The Committee, accordingly, recommends that clause 6(1) may be modified accordingly.

10.5 The Committee finds that clause 6(2) of the Bill is vague as any parent/guardian offering/paying capitation fee/giving donation may fall under this provision. Clause 14 prescribes that whoever committing an offence under the Act for which no penalty has been specified elsewhere is liable to a penalty extending to five lakh rupees. He can also be covered under clause 17 (1) whereunder any person contravening/attempting to contravene/abetting the contravention of provision(s) shall be punishable for imprisonment for a term upto three years or with fine or both. The Committee feels that such a provision is not required. This provision is also not there in the State laws. The Department may rethink about the inclusion of this provision in the Bill.

XI. CLAUSES 9, 10, 11, 12, 13 AND 14 RELATING TO PENALTIES

11.1 Clauses 9, 10, 11, 12, 13, 14 deal with the following:-

- Penalty of rupees fifty lakhs for doing contrary to information in prospectus.
- Penalty of rupees fifty lakhs for demanding or accepting capitation fee.
- Penalty of rupees one lakh for refusal to return or withholding documents.
- Penalty of rupees fifty lakh for false or misleading advertisement.
- Penalty of rupees fifty lakh for untrue advertisement.
- Penalty of rupees five lakh (for individuals) or rupees ten lakh (for society or trust) for which no specific provision is made under the Act.

11.2 On being asked to comment on the rationale for charging of very high penalties when compared with penalties for offences under Acts like the Food Safety and Standards Act, 2006, Environment Protection Act, 1986 etc. and that too on a uniform basis, the Department submitted that the present legislation sought to prevent first rather than punish. The quantum of penalties was naturally to be kept at a higher side when the intent was prevention. Attention of the Committee was drawn to the IT Act, 2000 whereunder a penalty of Rs. one crore has been prescribed. It was emphasized that monetary penalties on individuals could never be compared with what could be expected to be levied on trusts/societies.

11.3 UGC welcomed the provision for having penalties for different violations which would act as a deterrent for those institutions indulging in unfair practices. Positive response in this regard was received from the Ministry of Health and Family Welfare. However, it was pointed out that the capitation fee being charged for admission in medical colleges sometimes runs into an amount much more than Rs.50 lakh, and the provision of penalty in this regard needed to be modified accordingly.

11.4 Majority of the stakeholders, although supporting the provision of imposition of penalties in principle so as to ensure scrupulous adherence to the provisions of the proposed Bill, had strong reservations regarding the quantum of penalties as indicated below:-

- Severally harsh penalties will tend to reduce investments in education as well as aggravate the scarcity of academicians.
- Imposition of such penalties will provide additional tools in the hands of regulatory bodies like MCI, AICTE etc.
- Self regulating mechanism shall be better for handling such malpractices.
- Imposing monetary penalty is unlikely to be effective, other modes may be explored.
- Uniform amount of maximum penalty of fifty lakh rupees does not seem to be a correct approach. Quantum of penalty amount needs to be commensurate with the seriousness of offence.
- Minimum penalty also needs to be specified. It is possible that the adjudicatory authority even after finding an institution guilty of an unfair practice, may impose a nominal fine.
- Penalty for capitation fee needs to be enhanced specially for medical college. For other offences like misleading advertisements or doing contrary to information in prospectus needed to be fixed proportionately.
- For grave violations more stringent penalty apart from monetary penalties, like de-affiliation needs to be included.
- Other modes of penalizing also need to be explored, apart from monetary penalties.

11.5 The Committee takes into cognizance the fact that a uniform amount of penalty for all types of offences is against the principle of natural justice. There should be different penalties for different violations and the penalties should also be proportional to the offence. A major and minor violation cannot be treated as equal. The Committee, accordingly, recommends to the Department that the quantum of penalties under these provisions needs to be worked out with reference to case to case basis based on merit of each case or violation.

11.6 The Committee has also been given to understand that the maximum limit of penalty particularly for charging of capitation fees at rupees fifty lakh cannot be considered an effective deterrent, one of the reasons being very high rate of seats in medical colleges. **The Committee is of the view that a penalty of Rs. one crore for charging of capitation fee will act as an effective deterrent for institutions/individuals involved in such an activity. The Committee also recognizes the need for specifying a minimum penalty for violations as it is believed that all offences under the Act should be treated as serious as they affect the interests of students and may put their future at stake. The Committee, therefore, would like the Department to take into consideration the various implications of the violations of these provisions on the students especially and then arrive at a maximum and minimum amount of penalty for the violations.**

11.7 Attention of the Committee has been drawn to the word ‘knowingly’ in clause 9 of the Bill. Clause 9 reads as:-

*‘Any institution, which **knowingly** does anything contrary to the information published by it in its prospectus in violation of the provisions of section 5, shall, without prejudice to any proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees.’*

The Committee believes that insertion of the word ‘knowingly’ is unnecessary and it would dilute the objective of the provision as violators of this provision may take a plea that

this offence was not done ‘knowingly’ by them. The Committee, accordingly, recommends the deletion of the same.

11.8 Apprehensions have been voiced about misuse of clauses 12 and 13 relating to penalties for false or misleading advertisement or untrue advertisement by the authorities since the determination of violations under these provisions can be very subjective. Holding both the institution and the authorized person equally and separately responsible does not seem to be justified. **The Committee is in agreement with this apprehension and requests the Department to review these provisions.**

11.9 **The Committee observed that clause 14 dealing with penalty for which no specific provision is made under the Act, did not seem to be reasonable and clearly worded. When asked to clarify, the Department stated that this provision had been included so as to ensure that if any penalty was not prescribed anywhere in the legislation, still the act of omission or commission mandated by the legislation was executed by the institution. For example, as per clause 5, it was mandatory for the prospectus to be published and if the any institution failed to do so, then the office-bearers could be proceeded against as per clause 14. While the Committee finds the contention of the Department reasonable, it would like to draw its attention towards clause 17 relating to ‘offences’ whereunder any contravention/attempt to contravene/abetment in contravention of any provision of the Act/ Rules was to be considered an offence. This clause proposes imprisonment upto three years or with fine or with both. The Committee observes that along with specific clauses dealings with specific offences, a general provision *i.e.* clause 14 dealing with all such offences for which no penalty has been prescribed, the justification for having another general clause (clause 17) dealing with all contraventions of the provisions of the Act/rules made thereunder does not seem to be there. To quote the Department, non-publication of prospectus as envisaged in clause 5 can also be considered an offence under clause 17 as it would be in contravention of clause 5 and accordingly imprisonment/fine or both can be imposed. At the same time, it is also liable to be covered under clause 14. The Committee, therefore, is of the view that it would be appropriate to review clauses 17 and 14 and retain the clause which is required in the Bill. The Committee recommends to the Department for revisiting this provision and analyzing the need for it in the proposed Legislation.**

XII. CLAUSE 15 : CONFISCATION OF CAPITATION FEE, ETC.

12.1 Clause 15 which deals with the confiscation of capitation fee reads as follows:-

15(1) “Any capitation fee or donation or any other charges collected in contravention of the provisions of the proposed legislation, shall, be liable to be confiscated, by an order made by the concerned State Educational Tribunal or National Educational Tribunal, as the case may be, constituted under the provisions of the Educational Tribunals Act, 2010, and the capitation fee or donation or any other charge confiscated shall be dealt in such manner as may be prescribed.”

This clause provides for confiscation of any capitation fee or donation or any other charges collected in contravention of the provisions of the proposed legislation by an order made by the concerned State or National Educational Tribunal. It also states that the confiscated capitation fee, donation or charge shall be dealt in such a manner as prescribed by rule made by the Central Government. It has also been pointed out that both payment and receipt of capitation fee is illegal and accordingly, the question of refund does not arise.

12.2 The Committee takes into cognizance the provision related to confiscated fee in the State laws. The State laws stipulate either the return of the capitation fee to the person from whom it

was taken or deposition of the same in Government Fund. Kerala Act also specifies that both capitation-giver and the management are to be heard and capitation fee forfeited to the Government, even as a recovery of public revenue due to land. Maharashtra Act categorically provides that capitation fee shall be paid back to the person concerned. Tamil Nadu Act has also a similar provision. **The Committee notes that capitation fee after being confiscated would be dealt with as prescribed by the rules. The Committee opines that the Department can take a cue from the State laws and decide whether the confiscated fee should be forfeited to the Government or may be paid to the person concerned.**

XIII. CLAUSE 16 : ADJUDICATION OF PENALTY

13.1 Clause 16 which deals with adjudication of penalties reads as follows:-

“Save as otherwise provided in this Act, all the matters (including the penalties leviable under this Chapter) shall be adjudicated by the concerned State Educational Tribunal or the National Educational Tribunal, as the case may be.”

This clause provides that all the matters including the penalties leviable under Chapter II of the proposed legislation shall be adjudicated by the concerned State Educational Tribunals or the National Educational Tribunal, as the case may be, constituted under the provisions of the Educational Tribunals Bill, 2010, reason being that existing judicial machinery should not be overburdened with cases filed under the Act.

13.2 When asked to indicate any time-frame envisaged for disposal of cases by the Tribunals, the Department submitted that the affected students/parents will be able to approach a Tribunal for penal action against the institution as soon as the cause of action arose. Admitting that the Tribunal Bill did not prescribe any time limit for disposal of the cases, it was pointed out that the Tribunals would be able to render speedy justice, given the nature of their fast-track mechanism. The penal provisions were incorporated to act as deterrent for violators of the provisions of the Bill. It was also expected that once deterrent penalties were awarded and imposed on the institutions, the contravention of the provisions of the Bill might come down substantially and the need for more Benches or Tribunals might not arise.

13.3 The Committee is of the opinion that in the absence of any time-line, there is every possibility that adjudication by the Educational Tribunal can be a prolonged affair which would definitely go against the interests of the students. The Committee strongly feels that a specific time-line for disposal of cases needs to be laid down so as to ensure that grievances/complaints of students/teachers/other employees are disposed of at the earliest. An effective Grievance redressal mechanism along with time-limit prescribed through rules/regulations/norms for disposal of cases by Educational Tribunals can prove to be beneficial for the affected parties. The Committee would appreciate if necessary provisions are incorporated at the relevant place.

XIV. CLAUSE 17 : OFFENCES

14.1 Clause 17 reads as follows:-

17(1) Without prejudice to any award of penalty by the State Educational Tribunal or the National Educational Tribunal under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) if any person fails to pay the penalty imposed by the State Educational Tribunal or the National Educational Tribunal or fails to comply with any of its directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

14.2 This clause provides punishment for contravention of the provisions of the proposed legislation. It provides that without prejudice to any award of penalty by the State Educational or the National Educational Tribunal, if any person contravenes or attempts to contravene or abets the contravention of the provisions of proposed legislation or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. It further provides that if any person fails to pay the penalty imposed by the State Educational Tribunal or National Educational Tribunal or fails to comply with any of its directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

14.3 Stakeholders have voiced strong reservations regarding punishment by imprisonment for a term which may extend to three years or with fine or with both. They have held this provision as rigid and derogatory which will make the students, parents and other concerned to suspect the promoters, philanthropists, academicians, administrators and all other engaged in education related activities as wrongdoers rather criminals and not to be trusted upon for anything. They also consider punishment by imprisonment without a court judgment to be unfair.

14.4 The Committee is of the view that with State/National Educational Tribunals being given the authority to adjudicate in the matter relating to contravention of provisions of the Act, inclusion of a provision whereunder notwithstanding award of penalty by Educational Tribunals, imprisonment for a term extending to three years or with fine or both, does not seem to be justified. Similarly, on non-payment of penalty imposed by Educational Tribunal or non-compliance of its directions/orders, prison term extending to three years or with fine from rupees fifty thousand to rupees five lakh or with fine is also proposed. The Committee finds even this provision to be somewhat harsh. It is also not clear which authority would be designated for this task. The Committee has also taken note of clause 36 of the Educational Tribunals Bill, 2010, whereunder non-compliance of any order of State Educational Tribunal is liable to be punishable with a imprisonment term extending to three years or with fine upto ten lakh rupees. The Committee is of the view that with a specific provision (clause 36) already incorporated in the Educational Tribunals Bill, 2010, inclusion of similar provision having another penalty provision does not seem to be based on justifiable grounds. The Committee feels that right course of action would be to have the provision in the Tribunals Bill, 2010 and the present legislation need not focus on that aspect. Clause 17 may, accordingly, be deleted.

XV. CLAUSE 18 : COGNIZANCE OF OFFENCES

15.1 Clause 18 dealing with cognizance of offences reads as follows:-

“18(1) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any institution or director, manager, secretary or other officer thereof, except on the complaint in writing of such person authorized by the Central Government or the State Government in that behalf or by such person authorized by the concerned appropriate statutory authority, as may be prescribed.”

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act.

15.2 This clause provides that no court shall take cognizance of any offence under the proposed legislation, except on the complaint in writing of the person authorized by the Central Government or by the State Government in that behalf or of a person authorized by the concerned appropriate statutory authority and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the proposed legislation. The rules made under the proposed legislation shall provide for the persons so authorized to file complaints.

15.3 When asked to clarify the justification for prohibiting an aggrieved person directly approaching the court, the Department informed that the Bill made a distinction between offences committed under clause 6 and offences committed under other clauses. An offence under clause 6 dealing with demanding or accepting or paying of capitation fee could be booked directly and the police shall have to register an FIR. Non-cognizance of offences were generally the ones where a preliminary enquiry or establishment of substantial guilt had to be proved before the police or courts could initiate action. Several laws of the country (including many offences in IPC) define certain offences to be non-cognizable. This is provided for in order to ensure that unnecessary harassment of innocent persons and institutions does not take place without some amount of initial enquiry and establishment of guilt. If all offences under the Bill are made cognizable, it may lead to several false cases filed in the police stations leading to unnecessary harassment of institutions and managements. Besides, several students and parents may be affected by a single act of an institution, e.g. publishing false information. In such a case, since the offender is one and aggrieved are many, it is better that an officer authorized by the Government or the regulatory body files the case in the court. Only when the court is satisfied about the initial guilt or is convinced that an institution has indeed indulged in an unfair practice, will it direct the police to file an FIR and investigate the case and prosecute the offenders. It is, therefore, necessary to authorize officers of the Central or State Governments and regulatory bodies to *prima-facie* examine an offence and then to file a case in the court for taking cognizance of the offence. The Chairman, UGC, opined that although there is a need to provide for stern action against institutions indulging in unfair practices, educational institutions need to be protected from initiation or institutions of false cases in court as false/frivolous cases against institutions will hamper the program of higher educational institutions.

15.4 Some stakeholders were of the view that this provision needed to be deleted as no law would be effective unless it gave a right to an aggrieved person to file a case in court, if an offence has been committed by an institution or person. He would need the permission of a Government authorized person to seek addressal.

15.5 The Committee is in agreement with the view of the stakeholders that the rationale for prohibiting approaching the court through authorized officer will unnecessarily delay the cause of aggrieved party, particularly the students. The provision will make the students helpless if they do not have the right to approach the courts directly. It would also mean a prolonged procedure for redressal of grievances.

15.6 The Committee is not fully convinced by the contention of the Department for denying the aggrieved party opportunities to approach the courts directly. There are bound to be cases where due to unfair practices resorted to by an institution, career as well as future prospects of a student are at a stake. It may so happen that he is being denied a seat wrongfully, or his certificates are being not returned or there have been unfair practice in the conduct of examination. Urgent remedy could be awarded for them. Thus, it is more than clear that in the event of only very genuine grievance of the affected party where all the prescribed channels have failed to provide relief, it would be compelled to approach the court. Here also at the final stage when the time is running out, one is made to approach

the designated authority in the first instance which would defeat the very purpose of having such a provision. This mechanism would be available to institution authorities who might be implicated in a false case. It is true that such cases would be rare but justice needs to be provided to all. The Committee would also like to draw the attention of the Department to clause 45 relating to “Dismissal of frivolous or vexatious complaints” of Educational Tribunals Bill, 2010 reproduced below:

“where a matter instituted before any State Educational Tribunal or the National Educational Tribunal, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding fifty thousand rupees as may be specified in the order.”

15.7 The Committee also observes that the Educational Tribunals Bill, 2010 already has a specific provision, i.e. clause 47 relating to ‘Exclusion of jurisdiction of civil courts’ which reads as follows:

“No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the State Educational Tribunal or the National Educational Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

The Committee feels that in view of the above provision in the Educational Tribunals Bill, with the specific provision for debarring of only civil court and thus criminal courts being authorized, a provision like clause 18 does not seem to be required. Necessary modifications may be carried out accordingly.

XVI. CLAUSE 21 : OFFENCES BY INSTITUTIONS

16.1 Clause 21(2) dealing with offences by institution reads as follows:-

21 (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by an institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any governor, chancellor, director, trustee, manager, secretary or other officer of such institution, such governor, chancellor, director, trustee, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

This clause provides that where an offence under the proposed legislation has been committed by an institution, every person who at the time the offence was committed was in charge of, and was responsible to, the institution for the conduct of the business of the institution, as well as the institution shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

16.2 Committee’s attention has been drawn to the fact that as per this provision, civil and criminal proceedings will be instituted against the Governor and Chancellor and will also be punished with imprisonment that may extend to three years or fine that may extend upto fifty lakhs or both. It is pertinent to mention that Governor of State is the Chancellor of almost all the universities in States while Vice-President of India is the Chancellor of Punjab University, Chandigarh and the Chief Justice of High Court is the Chancellor of law universities in many states. It is quite shocking that while the Constitution of India, provides special protection to the status of Governor of States and the President of the Country to such an extent that any civil or criminal

proceedings in case are pending against a person before any court or authority before taking oath of the Governor of a State or the President of India, these all are brought to a halt during the entire term of his office. However, the proposed Bill provides for leveling civil and criminal charges against the Governor of States, the Vice-President of India, Judges of High Courts and even to put all of them in jail. Most astonishing is the fact that they will be made victim for acts and deeds performed by them in good faith towards discharge of their duties towards educational institutions by virtue of their post of Governor/Chancellor.

16.3 The Committee is of the view that making authorities like Governor and Chancellor (they can be Vice President or President) liable for punishment cannot be considered proper from any angle. Such provisions are not there in the State Acts. Authorities included under the provision of 21(2) are misplaced, accordingly the same may be modified.

XVII. CLAUSE 23.: BURDEN OF PROOF

17.1 Clause 23 of the Bill dealing with burden of proof reads as follows:-

“When an institution is accused of having committed an offence under section 8, the burden of proving that such institution has not committed such offence, shall be on the institution.”

This clause provides that when an institution is accused of having committed an offence under clause 8 (concerning making of false claims through advertisements or otherwise which are not based on facts or misleading), the burden of proving that such institution has not committed such offence, shall be on the institution.

17.2 Strong reservations have been expressed by some stakeholders about shifting the burden of proof to the management/institutions *i.e.* burden of proof lies with the accused. This was considered to be against the principle of natural justice. Such a provision could be used against the managements/institutions for victimization by people who were on inimical terms with the management/institutions. It was also mentioned that Section 101 under Chapter VII of Indian Evidence Act, 1872 states that:--

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.”

Besides this, there are various laws and Acts in force in India, not even a single section under IPC or any other law or Act shifts the burden of proof on the accused, rather under all laws and Acts in India and probably all other countries, the onus of proof, for all offences of whatsoever nature, lies with the prosecution only. Therefore, the stakeholders suggested that the provision of burden of proof should be repealed as it was too draconian.

17.3 Following clarification was offered by the Department in this regard:

“The “burden of proof” referred to in the proposed legislation concerns the evidentiary burden of proof and not the legal burden (presumption of innocence until proven guilty). Evidentiary burden of proof is generally fixed on the basis of economic efficiency or the societal needs to curb such practice. In the Civil Procedure Code, the presiding officer of the court while framing issues decides as to on which party the burden of proof would fall upon. In criminal matters, the onus of proof is generally upon the State as it would be more economically efficient for the State to prove its case rather than for the individual to prove his innocence. However, there are several laws where the burden of proof has been laid upon the defendant/respondent *e.g.* section 8A of the Dowry Prohibition Act, 1961, section 68J of the Narcotic Drugs and Psychotropic Substances Act, 1985, section 8 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1951, section

15 of the Bonded Labour System (Abolition) Act, 1976, section 104A of the Patents Act, 1970. Only in respect of offences alleged to have been committed regarding making false declarations in its prospectus or issuing false or misleading advertisements (clause 8) would the “burden of proof” be imposed on the higher educational institution. This provision puts onus on educational institutions that the cause of action would arise out of any violation or conflict with the declarations made by the institution itself through its prospectus in respect of actions fully within the volition of the institution itself. This is intended to make the institution assume greater responsibility in informing students seeking admission and other stake holders about its standards of quality, infrastructure, etc. In other matters, the standard provision in regard to application of “burden of proof” shall apply *i.e.* the onus shall be on the complainant.”

17.4 The Committee is in full agreement with the submission of the Department that putting onus on educational institutions would make the institution assume greater responsibility in informing students and other stakeholders about its standard of quality, infrastructure etc. According to the Committee, the provision seems to be justified specially in view of the fact that aggrieved party would be a student/his parents who would be approaching a Tribunal against the management of an institution. The institution would be more economically efficient than the aggrieved student or his/her parents and the burden of proof should therefore lie with the accused.

XVIII. CLAUSE 26 : NON-APPLICABILITY OF THIS ACT TO MINORITY INSTITUTIONS IN CERTAIN CASES

18.1 Clause 26 of the Bill reads as follows:-

“Nothing contained in this Act or the rules made thereunder shall affect the right of the minorities to establish and administer educational institutions of their choice.”

This clause provides a bar on application of the proposed legislation to any minority institutions in certain cases. It provides that nothing contained in the proposed legislation or the rules made there under shall affect the right of the minorities to establish and administer educational institutions of their choice.

18.2 As per the Department’s submission, minority educational institutions are not exempted from the operation of other laws such as regulating standards of education, if they are not violative of the right under Article 30 (1). Article 30 (1) of the Constitution states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It was emphasized that such institutions are not exempted from the operations of other laws such as those regulating standards of education. Therefore, the provisions of the Bill will be applicable to all minority institutions to the extent that they do not violate the constitutional provisions.

18.3 Majority of the stakeholders were of the view that this legislation should be applicable across the board to all institutions, be it minority institutions, private or public institutions. As the proposed legislation aims to protect the interests of the student community from the erring institutions/universities, the legislation should be applicable to minority institutions as there cannot be two different yardsticks for curbing unfair practices in higher educational institutions. It is also believed that excluding minority institutions from the ambit of this legislation would dilute the quality of education in the name of minority rights. Minority institutions have a right to establish and administer their own educational institutions of their choice, admit students of their choice but the standard and quality of education, eligibility, infrastructure, procedure for admissions and application of regulatory measures cannot be different from others.

18.4 The Committee observes that although the Department has clarified that minority educational institutions would not be exempted from the operation of other laws such as regulatory standards of education, the clause seems to be quite vague. It does not seem to indicate that minority educational institutions, if found resorting to unfair practices would be liable for action. The right to administer does not include right to maladminister. The Committee will like to draw attention to the Supreme Court judgment in TMA Pai case where the Apex Court, endorsing the concept that there should be no reverse discrimination has observed that “the essence of Article 30 (1) is to ensure equal treatment between the majority and the minority institutions.” Accordingly, no one type/category of institutions should be disfavored, or for that matter, receive more favorable treatment than other. The Committee feels that the present provision can lead to an interpretation whereby any instance of unfair practice resorted by a minority educational institution may not be acted upon. It needs to be ensured that interests of all the students including those studying in minority institutions are safeguarded. Therefore, a specific provision is required to be there which will clearly bring the minority educational institutions within the ambit of the legislation without violating their rights under Article 30.

XIX. CLAUSE 30 : APPLICATION OF OTHER LAWS NOT BARRED

19.1 Clause 30 deals with application of other laws not barred. It reads as follows:-

“The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

This clause provides that the provision of the proposed legislation shall be in addition to, and not in derogation of, the provision of any other law for the time being in force.

19.2 One of the stakeholders was of the view that this was a very damaging provision as this provision nullifies everything in the Bill. The managements will be compelled to answer to many forums for same set of allegations. It will also lead to parallel proceedings and multiplicity of litigations. It is, therefore, required that this Act should be one that supersedes all other State Acts and regulations on unaided professional institutions. Moreover, on the very same grounds, there can also be divergent findings if all State Acts are allowed to remain in force. Therefore, the existing regulatory bodies in the States may be divested with powers in matters where, this Act and the Tribunals Act will have powers to investigate.

19.3 The Committee finds merit in the argument and believes that even though it is implied that the central law would prevail over the state laws, no scope should be left for confusion leading to multiplicity of litigations. The Committee, however, takes note of the fact that a similar provision is mentioned in the Educational Tribunals Bill, 2010 along with a provision which enables the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The Committee wonders as to why the same provisions has not been added in the proposed legislation. The Committee, accordingly, recommends the Department to revisit the said provision and make necessary changes.

XX. CONCLUSION

20.1 The Committee would like to reiterate that the spirit behind bringing this piece of legislation is laudable. However, at the same time, the Committee also strongly feels that implementation of this long awaited law needs to begin at the earliest. Apprehension of the Committee is based on the realities at the ground level due to the anticipated delay in the

setting up of State Educational Tribunals as well as the large number of higher educational institutions of different categories governed by various statutory authorities spread across the country. In such a scenario, the Committee is of the view that the Department of Higher Education along with the Ministry of Health and Family Welfare will have to come forward as a nodal authority. They would have to work together in coordination with state authorities without impinging upon the state autonomy. Every effort will have to be made so as to ensure that this path-breaking legislation takes off at the earliest and thereafter enforced in the real sense.

20.2 During Committee's deliberations with various stakeholders on different provisions of the Bill and allied aspects, Committee's attention was drawn time and again to some crucial issues like regional imbalance, particularly, with regard to higher educational institutions imparting professional education, number of medical colleges *vis-à-vis* requirement of medical professionals in the country and acute shortage of teachers.

20.3 The Committee feels that there is a requirement of more institutions of higher education, specially in the sphere of medical education so as to produce more doctors. The practice of charging of capitation fee is also directly related to the shortage of seats in medical institutions. The problem is more acute in the Post graduation studies where the number of seats is very less. Thus, more medical institutions are required to be set up in the country to produce more medical professionals. It is a simple question of demand and supply which has led to the unfair practice of charging of capitation fee. Acute shortage of teaching faculty in higher educational institutions especially in medical institutions is another problem area. The Committee is of the view that these issues are related to each other and can be overcome by opening of more medical colleges in the regions/states which have less or no medical college. This would not only help in removing the regional disparities in this regard and increase the number of seats in medical education but would also go a long way in meeting the requirement of doctors in the country which is increasing day by day. This would also help in tackling the issue of rural versus urban divide which is at present tilted towards urban areas. As regards the issue of shortage of faculty, the Committee understands that at present one professor in the medical institutions guides 1 to 2 students only in postgraduate studies whereas the position is far better in some developed countries like United States of America and U.K. where a professor guides approximately 7 to 8 students. The Committee feels that it is a question of bringing into practice new methods of pedagogy and techniques so as to make optimum use of the existing faculty which would help in solving this problem to some extent. The Committee also feels that the other way to tackle the problem of teachers specially in medical colleges is that of taking initiative by Central government/State Governments in tandem in attracting more and more professionals particularly youth towards teaching profession by making it more lucrative and providing best of the facilities.

20.4 The Committee was also made aware that at present many of our students have been going to Russia, China, Kazakhstan and other countries in quest for medical degrees who on their return are not allowed to practice in country. **The Committee strongly feels that a viable solution to this problem needs to be found so as to protect both the interest of our students and provide quality health care to our people.**

21. The Committee adopts the remaining clauses of the Bill without any amendments.

22. The enacting formula and the title are adopted with consequential changes.

23. The Committee recommends that the Bill may be passed after incorporating the amended additions suggested by it.

24. The Committee would like the Department to submit a note with reasons on the recommendations/suggestions which could not be incorporated in the Bill.

PRASANTA KUMAR MAJUMDAR
Member of Parliament (Lok Sabha)

26.05.2011

Sir,

Education has been placed under the Concurrent List of the Constitution. Entry no. 25 under the Seventh Schedule of the Constitution states that both the Central and the State governments can enact laws in this regard. They should, however, discuss in detail before formulating any law.

But in reality we can see that in the Higher Education sector, the States are being denied any important role. In the Adoption Report too, it has been said that more than 17-18 States did not participate in the discussion. It has been accepted in the Adoption Report that the Committee was not totally satisfied in the matter of detailed discussion.

As per the provisions of Article 44 and Article 32 of the Constitution of India, the Parliament and State governments can amend the "Unfair Practice in Technical Education, Medical education and Universities Bill 2010." If Government of India enacts the amendment bypassing Parliament and the State governments, then it will amount to be against the spirit of Constitution.

1, therefore, oppose the Bill on this account.

PRASANTA KUMAR MAJUMDAR
Division No. 362

Pramod Kureel

Member of Parliament - Rajya Sabha

Member

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Ref. No. MP/RS/2011/85

Dated 26/5/2011

To

Shri Oscar Fernandes Ji

Hon'ble Chairman

Parliamentary Standing Committee on HRD

Parliament House, New Delhi

Sub: The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010

I would like to submit my concern that issues have been raised by certain stakeholders on the Constitutional validity of this bill which I understand is a major concern and needs to be dealt with utmost caution well before taking up this matter for finalizing the report on this Bill. Therefore, I would like to brief my observations on this issue to be a part of the report. .

Encroachments of the Constitutional Rights of the States

For making any law for any purpose of this country, adequate reference has to be taken from the Article 246, Seventh Schedule of the Constitution of India which confers powers upon the Parliament and States to make laws for matters included in their jurisdiction. Therefore proposed bill aimed at bringing reforms in higher education is not an exception and hence due cognizance of all constitutional provisions relating to higher education must be taken to check that legislative powers so conferred by the Constitution should not be exceeded and also to ensure that the Parliament or States should not interfere with each other's jurisdiction.

The Government has proposed this bill to be enacted by the Parliament specifically for institutions of technical education, institutions of medical education and all the Universities. However, as stated by the stakeholders and has also been observed, Parliament is **categorically debarred** to make laws for Incorporation, Regulation and Winding up of Universities by **Entry 44 of Union List** and power to make law on these matters is specifically vested with the States by Entry 32 of State List.

Entry 44 of Union List states, "Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities".

Entry 32 of the State List states, "Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations, co-operative societies".

Therefore all the matters pertaining to universities have been excluded from the jurisdiction of the Parliament and power to make laws on the matters of universities has been conferred by the Constitution upon the States, which as per the Constitutional provisions is all-exclusive. This implies that Universities have to be excluded from the applicability of this proposed bill as **Parliament has no power to make such a law to regulate the university matters**. This or such like law can be introduced at the level of States but not at the level of Central Government, as it will be an encroachment on States' Constitutional rights on Universities.

My colleagues must have also observed that the Government has also admitted in its reply to the queries of the Committee that Entry 44 of the Union List in the Seventh Schedule of the Constitution excludes universities; therefore it is quite surprising that in spite of being so clear on the implication of Entry 44 of the Union List, even then the Government has proposed to enact a law by the Parliament to regulate the Universities. This is highly objectionable and such a law can be made applicable to Universities only after Constitutional Amendment. Hence, this proposed Bill is wholly against the letter & spirit of the Constitution of India.

I do agree with the Government claim that Education is enlisted in the Entry 25 of the Concurrent List thereby making it a common subject of Central Government and States. However, it must be noted that the Parliament still cannot exercise the power to regulate any matter of Universities, because this power has been specifically withdrawn from the Parliament by the Constitution itself by imposing restrictions in Entry 44 of the Union List.

I found equally convincing the argument made by the stakeholders that Entry 66 of Union List empowers the Parliament to make laws only for coordination and determination of standards in institutions of higher educational only **and not** for universities. However, at the same time it has been observed that Parliament is entrusted with the power to legislate for universities which were in existence at the commencement of this Constitution and any other institution declared by Parliament by law to be an institution of national importance by Entry 63 of Union List.

I would like to make here the mention of 42nd amendment in the Constitution in 1976, by which Entry 11 of State List was omitted and Entry 25 of Concurrent List was amended; and consequently subject "education" was shifted from State List to Concurrent List; however it must be noted that Entry 44 of Union List and Entry 32 of State List which are under question have remained unaffected by that amendment and both these entries are existing in the Constitution as these were before that amendment. I am not able to agree with the reference of the Supreme Court Judgements cited by the Government to justify the legislative competence of the Parliament to make law for any matter concerning education, because after thorough examination of all these judgements, I did not find even the mention of Entry 44 of Union List in any of these three judgements. Therefore the matter pertaining to legislative competence of the Parliament for regulation of any matter of Universities in specific cannot be decided on the basis of any observation whatsoever made in those judgements.

In view of above, I would recommend that this matter need to be debated among the Committee members and must be gotten thoroughly examined by the Attorney General and

legislative experts, other than the Government, and their independent report must be solicited to deal with this controversy so aroused.

I agree with the concerns of the Government for necessity of introducing such a law that requires finalizing the report of the Committee on this bill, however I understand and other Committee members would also agree with me that this matters pertaining to constitutional validity of the proposed bill cannot be left unaddressed in hurry to get through this bill. Report on this bill can be finalised only after getting the report of the aforementioned legislative experts, on the Parliament competence to make law to regulate the matters of University constitutional validity.

The above is submitted for introducing as a part of the Report of the Committee and for required action in this matter.

Thank You

Pramod Kureel

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Member:

- Standing Committee on Human Resources and Development
- Consultative Committee for Information and Technology
- Court of Jawaharlal Nehru University

26.05.11

Dear Chairman,

I would like to bring your attention some of the suggestions in “The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010”.

Considering the fact that, Some Indian private Medical colleges more than rupees 1 crore from each student that they admit. So the provision of penalty “ranging from rupees 50000 to a maximum of 50 lakhs is too low for a deterrent. So, fix and raise the penalty on an amount one crore or beyond that.

- ❖ Clause 4 (g): Redraft the subsection (g) Clause 4 as “ imposition of monetary penalty of rupees one crore for doing contrary to information in prospectus, demanding or accepting capitation fee and publishing false or misleading advertisement or untrue advertisement and penalty up to fifty lakh rupees for refusal or withholding documents; confiscation of capitation fee or donation or any other charges collected in contravention of the provisions of the proposed legislation by the State Educational Tribunal and the National Education Tribunal (proposed to be established under the Educational proposed Tribunals Act, 2010).
- ❖ Clauses 9, 10, 12 and 13: Deletion of wording “be liable to a penalty which may extend to fifty lakh rupees” and replace it with the following: “be liable to a penalty with rupees one crore”.
- ❖ Clause 11 deletion of the following wording “be liable to a penalty which may extend to one lakh rupees and replace it with “be liable to a penalty with rupees one crore”.
- ❖ Clause 14: Deletion of the following wording “be liable to a penalty which may extend to five lakh rupees and in the case of a society or trust, with a penalty which may extend to ten lakhs rupees”. Replace it with the following wording “be liable to a penalty with rupees one crore”.
- ❖ Clause 17 (1): Deletion of the wording: “he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both”. Replace it with” he shall be punishable with imprisonment for a term not less than three years or with a fine of rupees one crore”.

- ❖ Clause 17 (2): deletion of the wording “he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both”. Replace it with the following “he shall be punishable with imprisonment for a term not less than three years or with a fine of rupees fifty lakhs”.
- ❖ Clause 9, 10, 11, 12, 13, 14, 15 (1), and violation of all other clauses in the bill: Addition of provision for Violation of, Prosecute the offender under existing criminal laws prevailing in the country.
- ❖ Deletion of clause 22 “This clause provides that any institution which publishes any advertisement which is false or misleading and in violation of the provisions of clause 8a, penalty which may extend to fifty lakh rupees, without prejudice to proceedings for prosecution under the provisions of the proposed legislation or any other law for the time being in force”. Replace it with the following wording: “Court shall have jurisdiction to entertain any dispute or proceeding in respect of any matter which the State Educational Tribunal or the National Educational Tribunal is empowered by or under this Act to determine, and injunction shall be granted by any court or other authority in respect of any action taken or to be taken under this Act”.
- ❖ There should be clarification also on the right of a person or institutions belong to minority has the right to start educational institutions in other States.
- ❖ Incretion of new clause in chapter II : creation of Mandatory body to approve the prospectus.
- ❖ Addition of new clause for reservation of seats: The prospectuses of the private managements mention separate reservation rules for each Medical College.

I am also attaching herewith the representation given by the Indian Council of Universities for considering to include in the final report of the HRD Standing Committee on “The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010”.

Thanking You,

P. K. Biju

Indian Council of Universities

Prof. D.S. Chauhan
Secretary General

VICE CHANCELLOR

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Dated: 21 May, 2011

To

Shri P.K. Biju Ji,
Hon'ble Member, Department-related Parliamentary
Standing Committee on Human Resource Development
209, V.P. House, Rati Marg,
New Delhi - 110 001

Sub: **Non-applicability of 'The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010' to the "Universities" established as full-fledged universities by Law made by Parliament or by State legislature, in adherence to the Entry 44 of the Union List under the Seventh Schedule of the Constitution of India.**

Dear Sir,

This is to mention that *vide* our earlier communication(s) and also during the hearing before the Parliamentary Committee, attention of your good self and other Committee members was drawn towards the fact that the proposed applicability of this Bill to the "Universities" is expressly in gross violation of the Entry 44 of the Union List and Entry 32 of the State List in the Seventh Schedule of the Constitution of India (Article 246). Evidences substantiating the aforesaid claim were also presented and the Committee members at that time were also convinced with the said matter.

However to our understanding, it seems that the said matter thereafter has not been taken into consideration; as regular meetings are being held with the Department of Higher Education and the matter seems to be unresolved as of now.

Therefore keeping in view the crucial importance of the said matter, resubmission of specific provisions as contained in this Bill which are against the Constitution, is made as under:

1. **Proposed Applicability of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2019 to the "Universities" is in gross violation of the Constitution of India because Parliament has no power to make law for regulation of the universities by virtue of Entry 44 of Union List and Entry 32 of State List under the Seventh Schedule of the Constitution.**

- (i) **Constitution of India, by virtue of Entry 44 of the Union List and Entry 32 of the State List under Seventh Schedule (Article 246), categorically debar Parliament to legislate on the matters related to “Incorporation, regulation and winding up of Universities”. This is purely a State subject, hence, this Bill aimed at regulation of universities cannot be enacted by the Parliament.**

This Bill aims to regulate charging of donations and capitation fee, admission fee & other charges, admission processes, advertisement & promotion and various other acts and operations of Universities besides institutions of technical education and medical education. However Parliament is categorically debarred by the Constitution to enact a law for regulation of universities because the subject “regulation of universities” is specifically excluded from the legislative powers of the Parliament *vide* Entry 44 of the Union List.

- Entry 44 of Union List in the Seventh Schedule of the Constitution reads:

“Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities”

Therefore, if the proposed Bill is made applicable to the universities. it will be in violation of the Constitution.

- Not only this, “Regulation of universities” is listed in Entry 32 of the State List, which reads:

“Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations, co-operative societies”

And hence, Parliament is not competent to legislate for regulation of universities as this is an exclusively State subject. Therefore, universities cannot be brought under the purview of the proposed law because the Parliament is categorically debarred to legislate on subjects “incorporation, regulation and winding up of universities” while States are expressly empowered to legislate on these subjects.

- (ii) **Two entries namely Entry 25 of the Concurrent List and Entry 66 of the Union List which are generally referred to justify the power of the Parliament to make law on matters concerning education, are also reproduced as below:**

Entry 25 in List III (Concurrent List) reads, “Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

Entry 66 in List I (Union List) reads, “Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions”

Although education is a concurrent subject by virtue of Entry 25 of Concurrent List, however power to regulate universities still cannot be exercised by the Parliament because this subject is categorically excluded from the legislative powers of the Parliament vide Entry 44 of Union List. Entry 66 of Union List gives the Parliament a limited jurisdiction that is to legislate only for coordination and determination of standards that too in institutions of higher educational only and not for universities.

Hon’ble Supreme Court has also held in case of *State of Bombay vs. Narottamdas Jethabhai*, 1951 A.I.R. (SC) 69: 1951 SCR 51, that when one item is general and another is specific, what is ‘specific’, will automatically cease to be in the category of what is ‘general’.

- (iii) **Institutions of Agricultural Education and Research are already excluded from the applicability of the proposed Bill on the plea by the Government that Agricultural Education is a State Subject existing in Entry 14 of State List, and hence proposed Bill is not made applicable to universities and institutions of agricultural education and research.**

This is much pertinent to mention that subject “incorporation, regulation and winding up of universities” is also a State subject *vide* Entry 32 of State List and not only this, these matters of universities are specifically excluded from the domain of the Central Government that too by the Constitution itself *vide* Entry 44 of Union List.

In spite of this fact, the Universities are proposed to be brought under the purview of this Bill to regulate the matters pertaining to universities. This is totally in violation of Constitution and is also an infringement on States’ rights.

It is Quite surprising that cognizance of one specific entry in the State List i.e. Entry 14 relating to “Agricultural Education” is being taken however other specific entry in the same list i.e. Entry 32 relating to “Universities” is given a complete go-by; and not only this, going beyond that another specific Entry 44 of Union List relating to “Universities” has also not been taken into consideration.

- (iv) **Parliament is competent to legislate for universities which were in existence at the commencement of this Constitution by virtue of Entry 63 of Union List, including the Banaras Hindu University, the Aligarh Muslim University, Delhi University, the University established in pursuance of article 371 E [Establishment of Central University in Andhra Pradesh] and any other institution declared by Parliament by law to be an institution of national importance. For the rest all universities, power to legislate vests with the concerned State only.**

By virtue of Entry 64 and 65 of Union List, Parliament can legislate on matters of establishing certain category of institutions by Central Government.

- (v) **It is worth to take note that three Supreme Court Judgements have been quoted by MHRD in CABE Meeting held on 31st August 2009 that includes - (i) Prof. Yash Pal & Anr. Vs. State of Chhattisgarh & Ors. in WP(C) No. 19 of 2004]; (ii) Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudgaonkar and Others (1963) SCR 112; and (iii) Prem Chand Jain & Anr. Vs. R.K. Chhabra (1984 AIR 981). On the basis of certain observation in these judgements it has been taken that Parliament is competent to legislate on any matter concerning education.**

However, it seems that detailed study of these judgments has not been made by the Government. After going in detail it has been found out that observations in relation to education matters in all these judgments, if any, have been made without taking note of Entry 44 of the Union List which categorically debar the Parliament to make law for incorporation, regulation and winding up of universities. Therefore, any of these judgements cannot be taken as a basis to empower the Parliament to enact the proposed Bill or any other law for regulation of university matters and of institutions thereunder.

- (vi) **By 42nd amendment in the Constitution in 1976, Entry 11 of State List was omitted and Entry 25 of Concurrent List was amended; consequently subject “education” was shifted from State List to Concurrent List;**

However Entry 44 of Union List and Entry 32 of State List have remained unaffected by that amendment.

Therefore this is quite apparent that power to make law for regulation of universities does not lie with the Parliament and this power vest with the States only. Entry 44 of the Union List in the

Seventh Schedule of the Constitution clearly excludes “Universities”. Incorporation, regulation and winding up of universities are excluded from the scope of Parliament by Entry 44 of Union List and these are vested with the States by Entry 32 of State List, and, hence, universities cannot be brought under the scope of this Bill.

2. Appeal for exclusion of “Universities” from the purview of the proposed Bill.

In view of above, appeal is hereby made that due cognizance of the submission so made is taken and accordingly the word “Universities” should be deleted from the nomenclature of this Bill, the definition of “Institution” under Clause 2 (I) (e) and other provisions contained thereunder; so that “Universities” should be excluded from the purview of this Bill.

It is also pertinent to mention that by “Universities” we mean Full-fledged Universities established by Law *i.e.* either by Law made by Parliament or by State legislature as defined under Section 2 (f) of UGC ACT 1956. Such universities, 393 at present including Central, State and Private as per UGC Statistics, are created by legislative powers under the specific provisions of the Constitution of India after going through a tough and long Constitutional process of enacting a Law.

However, applicability of this BHI may be extended to all the institutions of higher education *i.e.* 16885 in number at present as per statistics available on the MHRD website. Existing more than 10364 AICTE approved technical institutions, 314 MCI approved/recognized MBBS institutions and nearly 300 DCI approved BDS institutions are already covered under this Bill.

The issue pertaining to the competence of the Parliament to legislate on matters relating to regulation of institutes of higher education may be debated well before hand for the reason being that Entry 66 of Union List empowers the Parliament only for co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Therefore, independent advice of legal and judiciary bodies may be sought whether the scope of Entry 66 of Union List can be extended for regulation of those institutions of higher education or not.

Final Prayer

A final prayer is hereby made to your good self that:

- (i) **‘The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010’ may be made applicable for all the institutions of higher education besides institutions of technical education and medical education; and**
- (ii) **This Bill should not be made applicable to the “Universities” established as full-fledged universities by Law made by Parliament or by State legislature, in adherence to the Entry 44 of the Union List under the Seventh Schedule of the Constitution of India. And hence, the word “Universities” should be deleted from the nomenclature, the definition of “Institution” under Clause 2 (1) (e) and other provisions contained under this Bill; so that “Universities” should be excluded from the purview of this Bill.**

The above is submitted in anticipation that your good self will give a personal attention to this matter and the prayer so made will be accepted and necessary action will be certainly taken at the earliest.

Thanking you in anticipation.

With regards,

Yours sincerely,

Sd/-

(D.S. Chauhan)

26th May, 2011

To

**Shri Oscar Fernandes Ji,
Hon'ble Chairman,
Committee of Human Resources Development, Parliament of India,
Rajya Sabha Secretariat,
New Delhi.**

**Subject:- Notes on The Prohibition of Unfair Practices in Technical Educational Institutions,
Medical Educational Institutions and Universities Bill, 2010**

After going through the provisions contained under this bill and views of the stakeholders, following observations have been made, which I am submitting herewith, which I would stress upon for incorporating in the report to be drafted on this bill.

1. I agree with the concern of the Government and members to introduce a law to check and curb unfair practices in the field of medical education and technical education rather I would recommend to extend its application to all the fields and all levels of education including higher education, teacher education, legal education, primary, secondary and other levels of education and coaching institutes and schools also need to be covered in its scope.

2. I agree with the concern of the Government to deal with the wrongdoers in the field of education, however, leveling criminal prosecutions and imposing punishment of term imprisonment is too derogatory for academicians and philanthropists. We cannot ignore the much-needed private investments to achieve the target gross enrolment ratio in higher education. I am unable to agree with the Government that this law is solely aimed at punishing the bad institutions and will not affect the interest of good ones.

Punishment of term imprisonment so prescribed for each and every offence irrespective of its nature and gravity, more than acting as a deterrent, tend to lower the morale of the private institutions and thereby reducing the investments in education drastically that the Government will not ever be able to compensate. Therefore, all the clauses in this bill providing for punishment of imprisonment ought to be withdrawn.

As per the version of the Government, such like provisions do not exist anywhere in the world. It must be noted that in many countries where profiteering is not restricted for educational activities, even then such like laws do not prevail. However in India, where education is totally a philanthropy service, we cannot expect the philanthropists to invest hundreds of crores of rupees for risk being jailed.

Comparison of the offences in education with dowry death that itself is a murder so made by the Government is not justified at all. No offence in education as listed in the proposed bill is comparable with the offence of committing a murder or even an attempt to murder. Therefore, these severally harsh punishments of imprisonment should be totally done away with. Moreover amount of penalty for each offence should be determined in consideration of the nature and gravity of the related offence.

The Government, going against the principle of law and natural justice, has proposed to shift the burden of proof on accused itself instead of prosecution, which is far ridiculous. There are thousands of laws and Acts in force in India, however, under all laws and Acts in India and probably all other countries, the onus of proof, for all offences of whatsoever nature, lies with the prosecution only. No educational institution can go beyond the rarest of rare heinous crimes of like rape, murder, sedition, espionage etc. even in those cases it is the prosecutor who has to prove that crime is done by the accused and burden of proof is never shifted to accused under any circumstances. Therefore provision of burden of proof much needed to be modified and burden to prove the accused as guilty should lie with the prosecution only.

3. Another concern raised by certain stakeholder needs to be debated, which I understand has been ignored in our earlier discussions. I have gone through the constitutional entries namely Entry 44 of Union List and Entry 32 of State List, read jointly and severally making it much apparent that the legislative power on matters pertaining to Universities is conferred upon the States and this power has been specifically withdrawn from the powers of the Central Government. Therefore I understand that the bill under consideration so providing for various checks and punishments to deal with matters of Universities cannot be enacted as law, because States will feel cheated by the Central Government interfering with their jurisdiction on matters of Universities. Therefore, the legislative powers of the Parliament to enact this law and extending its application to universities in specific needs to be examined thoroughly by legislative experts outside government system. Although education is a concurrent subject by virtue of Entry 25 of Concurrent List, however power to regulate universities still cannot be exercised by the Parliament because this subject is categorically excluded from the legislative powers of the Parliament *vide* Entry 44 of Union List.

4. Another issue of greater concern is that the Government is eager upon motivating foreign educational providers to come and set up campuses in India and for that as many relaxations are being provided from the application of this bill as well as the bill specifically drafted for regulation of entry and operations of foreign educational institutions. However, Indian investors are being discouraged by introducing such strict laws.

In India, education is a matter not for profit and only societies, trust and other not for profit organisations are allowed to establish educational institutions. Whereas, this should also be applicable for the foreign education providers seeking to establish educational institutions in India. Although provision has been made under law proposed for regulation of foreign institutions to debar employing any part of surplus in revenue generated by operations of foreign institutions established in India for purposes other than growth and development of institutions established by them in India, however neither the definition of “Foreign Educational Institution” nor anything else contained under this Bill provides for any such mandate.

Under the proposed law so meant for Indian institutions, much stringent and unwarranted legal & penal proceeding have been prescribed against institutions, philanthropists and each and every person responsible and engaged for any act, alleged as unfair or in violation of those laws. Besides this, punishment prescribed for Indian institutions and aforesaid all persons so engaged for these institutions includes imprisonment for a term upto three years that can be given in addition to imposing penalty upto fifty lakh rupees. However, nothing such like penal proceedings or severe derogatory punishments are prescribed in the new law proposed for regulation of foreign institutions; as such implying that the Government in actual wants to encourage foreign institutions to create campuses in India and at the same time also wants to discourage Indian institutions not

to even engage in any higher education related activity. Otherwise also cure of the disease should not be worse than the disease itself.

If my hon'ble colleagues and other member are not willing to accept it then it should be treated as my dissenting note and be incorporated in the final report on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010.

Inconvenience caused is regretted,

Yours sincerely,

Sd/-
(Sis Ram Ola)
MP (LS)

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE — AT A GLANCE

I. INTRODUCTION

The Committee welcomes the proposed legislation having the laudable objective of protecting the interests of student community. It is a well known fact that with the massive expansion of higher education institutions in the country, uncalled for increase in prevalence of unfair practices has also become very evident. (Para 1.3)

II. CONSULTATION PROCESS

The Committee is not happy with the level of consultations undertaken by the Department with respect to the Bill. There has been lack of a thorough consultative process while drafting such a historic piece of legislation having a wide-ranging impact on the functioning of higher educational institutions spread across the country. Mere sending of the draft legislative proposal to the Chief Secretaries of all State Governments and Administrators of UTs by the Department in 2009, in the absence of any response from any State Government cannot be considered as concurrence on their part. The Committee is well aware of the fact that CAGE is the highest policy advisory body of education in the country. However, passing of a unanimous resolution endorsing the need for the proposed law in the CAGE Committee meeting having 17 State Ministers representing higher and technical education can only be viewed as a formal decision. To think that intensive deliberations analyzing not only the broad parameters of a piece of legislation but also likely impact of its various provisions on all concerned can be undertaken at such a high level meeting could be considered totally impractical. Right course of action would have been pursuing this crucial policy matter with all the State Governments, at least those having a very high concentration of higher educational institutions. (Para 2.3)

Not only this, the Committee is dismayed to observe that other major stakeholders, *i.e.* statutory regulatory bodies like UGC, MCI, AICTE etc. remained a part of the formal exercise only. On a specific query in this regard, the Ministry has candidly admitted that no direct consultations with regulatory bodies like MCI, DCI, etc. have been undertaken since consultations with these bodies are internal to the Ministry of Health and Family Welfare, being under the purview of that Ministry. Presence of Chairman, Academic Cell, MCI in the CAGE Committee meeting was considered adequate enough. The Committee is compelled to point out that this line of action has been taken by the Department in respect of its own regulatory bodies like UGC and AICTE. Like MCI, UGC and AICTE only remained a part of the unanimous endorsement for the need for such a law at the CAGE Committee meeting. (Para 2.4)

The Committee's deliberations would have remained incomplete without having an idea about the viewpoint of Societies/Trusts as well as individual institutions about the viability of the proposed legislation, relevance/need of the various provisions, their impact, need for modification, likely problem areas and other allied aspects. The Committee is of the firm view that the private sector has played a major role in the massive expansion of higher education in the recent years in the country. The Committee, accordingly, held a series of meetings in Delhi as well as during its study visit to the southern States. A detailed questionnaire was also sent to the major stakeholders with whom the Committee

had interacted. The Committee was given to understand that broadly speaking, the Bill was considered to be a welcome step. The Committee, however, observed that representatives of private sector not only had a number of reservations about the proposed legislation, its impact, problem areas etc. but there was also a very visible under current about it being somewhat targeted against the private higher educational institutions. The Committee had also taken note of a number of valuable suggestions given by them, incorporation of which in the proposed legislation is certainly going to strengthen the same. While suggestions pertaining to specific provisions of the Bill have been dealt with in the relevant part of the Report, the Committee would also like to examine at length the apprehensions of representatives of private institutions in the succeeding paragraphs. (Para 2.18)

The Committee is of the view that reservation of the Indian Council of Universities about the constitutional validity of the proposed legislation does not seem to be well-placed. As rightly pointed out by the Department, after insertion of Entry 25 in List III in 1976, Parliament is fully competent to legislate on matters relating to higher education including universities. The Committee would also like to point out that enactment of this legislation is neither going to affect the autonomy of States or independent functioning of individual universities/institutions. One must also not forget that the main objective of the proposed legislation which is primarily disclosure based, is curbing of unfair practices being resorted to by higher educational institutions against our young students. It has also been brought to the notice of the Committee by many stake-holders that by and large State laws operational in 4-5 States relating to capitation fees and admission procedures have not proved to be effective enough. In such a scenario, education being in the Concurrent List, initiative taken by the Department for formulation of a Central Law should be considered a welcome step by all concerned. (Para 2.22)

The Committee would like to set at rest all such doubts as the intent underlying the Bill is not to dissuade any genuine private promoter from setting up institutions. It is a well-known fact that private sector has played a major role in the unprecedented growth of higher education in the country in the recent years. Government is also aware that a substantial part of investments in the higher education sector has to come from private initiatives only, if the GER has to be increased to 30 per cent by the year 2020. The Committee would like to emphasize that the Bill being disclosure based is not going to dissuade good and noble promoters. Its main purpose is to make the entire process of education in higher educational institutions more transparent in the interest of students. (Para 2.23)

III. ISSUES NOT COVERED IN THE BILL

Scope of the Bill

The Committee observes that the National Council for Teacher Education has been left out from this list. The definition of 'institution' as given in clause 2(e) is not very specific. The Committee is of the firm view that instances of unfair practices need to be curbed in all categories of higher educational institutions be it Central Universities, deemed to be universities, State Universities, all higher educational institutions including institutions of national importance. All such institutions should have the same governance pattern. Any ambiguity in this regard should, therefore, be removed from the Bill, by having specific definitions at the appropriate place. The Committee would like to draw the attention of the Department to the definitions of terms, 'higher educational institution' 'college' and 'Central Educational Institution' as given in the Educational Tribunals Bill. The Committee also takes note of the clarification given by the Department with regard to

coverage of institutions under the proposed legislation. The following categories have been listed by the Department which are mandated to be covered:

- All medical institutions recognized by MCI, DCI, CCIM, INC, Pharmacy Council, whether private or Government.
- All institutions imparting technical and professional education leading to award of a degree/diploma in engineering and polytechnics recognized by AICTE whether coming under the University system or not.
- All Universities including Deemed-to-be Universities, whether private or public.
- All institutions/colleges imparting any kind of education (general or technical) which are part of the University system, covering all affiliated, constituent colleges/campuses of Universities. (Para 3.3)

The Committee strongly feels that it would be appropriate to have a very specific definition about the coverage of all categories of institutions intended to be covered under the ambit of the proposed legislation. The Committee, therefore, is of the view that detailed definition of institutions as given under the Educational Tribunals Bill, 2010 should be the benchmark of this legislation. One must not forget that one of the powers assigned to the Educational Tribunals is to handle matters relating to use of unfair practices by any higher educational institution. Necessary modifications may be carried out accordingly. (Para 3.4)

The Committee is not convinced by the clarification given by the Department. First and foremost issue which needs to be kept in mind is that employment of unqualified teachers needs to be considered as an unfair practice in the context of students who would obviously be deprived of their right to quality education. Unfair Practices cannot be restricted to remuneration in the context of teachers/employees. The Committee would like to draw the attention of the Department to the following pertinent observation made by the Yashpal Committee:

“In many private educational institutions, teachers are treated with scant dignity. There are many terrible instances of faculty being asked to work in more than one institution belonging to the management; their salary being paid only for nine months; actual payment being much less than the amount signed for; impounding of their certificates and passports, compelling them to award pass marks in the internal examination to the favourites.” (Para 3.6)

The Committee would also like to point out that the Educational Tribunals Bill, 2010 is mandated to provide effective and expeditious adjudication of disputes involving teachers and other employees of higher educational institutions and other stakeholders including students. It would have been appropriate if specific provisions relating to unfair practices where teachers/employees are the victims were also incorporated in the Bill on the pattern of what is envisaged for students. The Committee, accordingly, recommends that necessary additions/modifications may be made at the relevant places in the Bill. (Para 3.7)

Definition of the term ‘Unfair Practices’

The Committee observes that all the unfair practices are not covered in the Bill at present and accordingly penalties have been prescribed only for specific unfair practices as enumerated therein. Clause 14 relating to ‘Penalty for which no specific provision is made under the Act’ can take care of such unfair practices but that would be to a limited extent only. It also needs to be kept in mind that quantum of penalty in this clause extending to

five lakh rupees/ten lakh rupees is very less when compared with specified unfair practices. Secondly, the Committee's attention has been drawn to the provision of Educational Tribunals Bill, 2010 which lays down that State Educational Tribunals would be empowered to handle only those matters relating to use of unfair practices by any higher educational institution which have been specifically prohibited under any law for the time being in force. In such a scenario, the Committee foresees situations where students become victim of unfair practices not specifically covered in the present Bill and thus denied any relief under the Educational Tribunals Bill. Clause 14 of the Bill does not serve the purpose as there may be unfair practices having higher level of victimization which would need specific deterrent action. The Committee, therefore, is of the firm view that an enabling clause taking care of unspecified unfair practices needs to be incorporated in the Bill. (Para 3.10)

Bill-disclosure-based-impact thereof

The proposed legislation has been termed as a disclosure based one emphasizing heavily on transparency. The Committee, however, would like to point out that even though self-disclosure of information by institutions is a positive trend but there is policy constraint with respect to some of the unfair practices which may be justified after being covered in the Bill. Clause 5 enumerates the various details which are to be included in the prospectus. Clause 9 provides penalty for doing contrary to information in prospectus. However, examination of clause 5 reveals that while details like intake capacity, eligibility criteria of students and educational qualifications are to be as per statutory authority specifications, details relating to fee and other charges, the percentage fee to be returned, admission procedure, details of teaching faculty, salary structure do not have such a reference. The Committee, accordingly, recommends that all the details to be given in the prospectus should have a reference to the statutory specifications/norms. (Para 3.11)

Handling of Frivolous Complaints

The Committee, while deliberating on the Bill came across apprehensions expressed by the private stakeholders with respect to frivolous complaints which may unnecessarily drag the institutions into multiple litigations. The Committee observes that there is a specific provision i.e. clause 45 regarding 'Dismissal of frivolous or vexatious complaints' incorporated in the Educational Tribunals Bill which adequately takes care of apprehensions of private stake-holders. (Para 3.12)

Grievances Redressal Mechanism

The Committee would like to point out that the Department's response clearly indicates that all the institutions in the country do not have such an internal mechanism at present. Secondly, perusal of clause 17 read with definition of the term 'service rules' as given in clause 3 (1) (X) of the Educational Tribunals Bill, 2010 pertaining to teachers or employees indicates that apparently students are not covered under this provision. The Committee observes that there needs to be a mechanism in place at the institution/university level in the form of a committee having independent members also which has the power/authority to examine any complaint/grievance in the first instance and resolve the dispute amicably. Only in the event of a stalemate or either party remaining dissatisfied, process for imposing of penalties may start. This will be in the interest of both the students and institutions as the students would not have to approach the tribunal for redressal of their complaints and it will also curb frivolous complaints against the institutions. Further,

it would also help in lessening the burden of State Educational Tribunals. The Committee opines that the Department should think of such a middle path in the interest of both the students and institutions. (Para 3.15)

CLAUSE 1: SHORT TITLE, EXTENT AND COMMENCEMENT

Justification given by the Department does not seem to be very convincing. The Committee would like to point out that the proposed legislation in its Chapter II deals with Conducting tests for Admission, Publication of Prospectus and Prohibition of collection of Capitation Fee etc and Chapter III pertains to 'Imposition of Monetary Penalties' and also adjudication of penalties by the concerned State Educational Tribunals. The Committee is aware of the fact that no uniform date can be prescribed for coming into operation of all State Educational Tribunals. The Committee, however, is of the view that a specific period of one year or six months can be laid down for setting up of State Educational Tribunals. So far as Chapter II of the proposed legislation is concerned, the same needs to be implemented immediately on being notified in the Official Gazette. The Committee, accordingly, recommends that necessary modifications may be made in clause 1(3) of the proposed legislation and also in the relevant clause of Educational Tribunals Bill, 2010. (Para 4.3)

V. CLAUSE 2 : DEFINITIONS

The Committee is very well aware with the prevalent trend of capitation fees in the higher educational institutions especially in medical and engineering colleges. During the study visit of the Committee, it was pointed out by students that admissions did not take place on merit but on the basis of capitation fee. In the name of 'other charges', capitation fee was being asked from the students at the time of admission. The Committee, therefore, believes that "other charges" to the extent possible should be specified in the Act itself so that there is no scope left for the institutions to demand "capitation fee" in the garb of other charges from the students. The Committee also takes note of a suggestion that amount of excess of tuition fee should be specified so as to identify it as capitation fee. Ten per cent excess of tuition fee can be the benchmark for identifying 'capitation fee'. The Committee is of the view that the definition of 'capitation fee' be made more specific so as to curb the malpractice of capitation fees demanded by the institutions thereby protecting the interests of students and their parents. (Para 5.2)

The Committee finds the definition of the term 'State Government' to be appropriate. The institution/university can follow the policy of one State only. Accordingly, it may be as per the State Government where main campus of the institution/university is located. (Para 5.5)

VI. CLAUSE 3 : PROHIBITION OF ACCEPTING ADMISSION FEE AND OTHER FEES AND CHARGES WITHOUT RECEIPT

The Committee notes that a number of pertinent issues pertaining to admission fee and other fees and charges were raised before the Committee like:-

- There is a need for having a mechanism for deciding the fees to be charged by the Institutions/Universities specially in view of very high fees being charged by private universities. One option given was to fix the upper limit for various courses. This can be fixed by the State Fee Regulation Committees and where such Committees are not there, fees can be fixed higher on a justified basis *i.e.* ten per cent higher than fixed by State Committees.

- Other charges need to be specified.
- The fees so fixed can be for a year or can be revised only after a minimum period *i.e.* three years. (Para 6.6)

The Committee finds the above stand of the Department incomprehensible. The element of helplessness and total lack of initiative on the part of the Department inspite of there being a specific Supreme Court directive is not acceptable to the Committee. Charging of exorbitant fees with no rational basis whatsoever is an unfair practice which needs to be tackled without any further delay. The Committee wonders how the mere fact of putting the details of fees in the prospectus will justify the fees inspite of their being exorbitant or irrational. The Committee foresees another emerging scenario on the enactment of such a legislation. Charging of any amount of fees would become unchallengeable once the same are included in the prospectus. The Committee would appreciate if Supreme Court observations that State Committees regulating admission procedure and fee structure have to continue only as a temporary measure until the Central Government or the State Governments are able to devise a suitable mechanism and appoint a competent authority, are acted upon in the real sense. Proposed legislation is the right opportunity for the Central Government to take the much-awaited initiative. Either a workable mechanism for deciding the fee structure for various professional courses or laying down minimum and maximum limit for fees for different categories of courses based on the ground realities needs to be worked out. In the absence thereof, the Committee can only emphasize that the students and their parents will continue to become the victim of unfair practice of exorbitant and irrational fees, inspite of this legislation being enacted. (Para 6.11)

The Committee would also like to point out that the absence of any specific definition of the term 'other fees and charges' will leave the ground open for the managements of higher educational institutions to ask for any kind of charges from students as they deem fit. (Para 6.12)

Committee's attention has been drawn by two State Acts which specify the kind of charges to be paid by the students. Kerala Self Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 specifies the following categories of fees/charges: tuition fee, library fee, caution deposit, development fee and refundable deposit. Similarly, the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 includes the following fees: - Tuition fee, Term fee, Library fee and security deposit, Lab fee and security deposit, Gymkhana fee, Examination fee and Hostel fee, mess charges. This can be the benchmark for the specification of charges to be defined in the Bill. (Para 6.13)

VII. CLAUSE 4 : PROHIBITION OF ADMISSION WITHOUT SPECIFIED ADMISSION TESTS OR *INTER SE* MERIT FOR SELECTION OF STUDENTS

The Committee would like to emphasize upon the main purpose of this provision which is to have a transparent admission process based either on entrance test or on *inter se* merit of students. Once this is accomplished, allegations of admission tests conducted by private institutions being only farcial and also not based on *inter se* merit of students can be checked in the real sense. The Committee feels that there should be no scope for manipulation/malpractices in conduct of entrance tests. The Committee finds the above provision appropriate enough. However, the implementation mechanism therefor has to be made tamper-free and foolproof. Accordingly, the Committee recommends that effective regulation and monitoring of entrance or admission tests must be done to make the

admission process more credible and authentic without infringing the autonomy of institutions/universities. (Para 7.7)

VIII. CLAUSE 4(3)

The Committee taking note of the reservations expressed by the stakeholders is of the view that it may not be practically possible for an institution to exhibit entire records of the selection of students on the website due to bulkiness of the records which would include answer sheets of the students. Also, the students may not feel comfortable if their answer sheets are publicly displayed for all to see and therefore would violate their privacy. However, the Committee believes that it is appropriate for an institution to maintain entire records of the process of the selection of students and produce the same whenever called upon to do so by the appropriate statutory authority under the Act. This would help in ensuring a transparent and fair process of selection of students. (Para 8.4)

Attention of the Committee has been drawn by another related issue. It is a common practice that the main entrance tests are conducted not on individual institution basis but are conducted by either a general authority or one nodal institution designated for the purpose. For example, every year one IIT and IIM act as the nodal body for conduct of exams. Similarly, entrance tests are also conducted by bodies like CBSE. However, the Act envisages that action can be taken only against particular institution. In such a scenario, in the event of any malpractice taking place, it is not clear as to which authority will be held responsible. The Committee is of the view that the Department should clarify the position of bodies like IIT, IIM, CBSE in this regard, by making required modifications in this provision. (Para 8.5)

IX. CLAUSE 5 : MANDATORY PUBLICATION OF PROSPECTUS, ITS CONTENTS AND ITS PRICING

The Committee is not convinced by the clarification given by the Department that all statutory obligations could be prescribed in the prospectus under sub-clause (xii) of clause 5(1). The Committee wonders when reference to appropriate statutory authority/prescribed norms can be made with reference to the number of seats, eligibility criteria, educational qualifications, syllabus details, omission of such a reference with regard to fee details, refunding thereof, and admission/selection process of students, details of teaching faculty has been made. The Committee would like to point out that any deviation in respect of such details is likely to hit both the students and teachers. The Committee fails to understand the rationale for putting such vital details under a general sub-clause. (Para 9.5)

The Committee is, therefore, of the view that till the evolution of a foolproof mechanism about regulation of fee structure, the minimum requirement of basis/norms/criteria about the quantum of fees to be charged has to be mandatorily mentioned in the relevant clause. The Committee would also like to point out that the term 'other charges' also needs to be made specific by indicating the various components coming under its ambit. Likewise, percentage of fees to be refunded should not be left at the discretion of institutions. The Committee understands that guidelines/norms have already been prescribed by the Department in this regard. A reference to the same can be easily incorporated. (Para 9.6)

The Committee is of the view that not only the Bill is disclosure-based, the principle of transparency has to be ensured so as to protect the students from unfair practices. At the same time, the Committee also finds some substance in the contention of the

stakeholders about feasibility of including details of syllabus of all the courses and faculty members. The Committee is of the view that keeping the practicability aspect in mind, details regarding fee, number of seats, eligibility criteria for admission and the process of admission/selection and infrastructure need to be given in the printed prospectus which is as per the present practice. However, full details regarding faculty and syllabus can be put on the website. (Para 9.7)

Another important issue highlighted in this clause was the need for having qualified faculty as per the prescribed norms. There have been many instances where less qualified faculty and even fresh pass outs are engaged by the institutions for teaching. As per this provision, the institution would have to give details of the teaching faculty, their educational qualifications, teaching experience and minimum pay and other emoluments payable for each category of teachers and other employees. However, mere publication in the prospectus by an institution about its faculty which may not be qualified as per norms or even absence of adequate number of faculty can make it justified since the institution has disclosed the information in its prospectus. The Committee, accordingly, recommends that reference about prescribed norms/statutory obligations should be there in respect of faculty details also. Secondly, it may happen that a faculty member may leave the institution or a new faculty member may join the institution mid-session. The Committee is of the view that institutions should have the option to make necessary changes in the website in the event of the faculty members leaving or joining. (Para 9.8)

The Committee observes that as per the definition of the word 'prospectus' as given in clause 2(1) (i), it can be a publication in print or otherwise, institutions will have the option to give all the details in the prospectus or put them on their website. However, clause 5(1) specifically lays down that every institution shall publish a prospectus containing all the details as enumerated therein. Proviso to this clause also specifics all such details shall have to be put on website. The Committee feels that clause 5 read with the definition of 'prospectus' is somewhat vague as it gives the impression that both printing of the prospectus with full details along with putting the same on the website is mandatory. The Committee would appreciate that element of ambiguity with regard to publication of prospectus and putting of the same on the website is removed by having a precise provision. (Para 9.9)

X. CLAUSE 6: PROHIBITION OF CAPITATION FEE

The Committee observes that clause 6(1) will not cover fully such persons who may act as agents or middlemen collecting capitation fee on behalf of the institutions. On a specific query in this regard, the Committee has been informed that the present Bill enables action being taken against any person who misleads students. Clause 8 provides that no institution or person authorized shall issue or publish any advertisement making false claims about recognition, academic and infrastructure facilities etc. It was also informed that clause 13 provides for a penalty of Rs.50 lakhs as well as prosecution in case of untrue advertisements issued in violation of clause 8. (Para 10.2)

The Committee fails to understand how agents or middlemen could be covered under clauses 8 and 13. Both these clauses pertain to misleading/untrue advertisements given by institutions or persons authorized by them and action to be taken against the institution. The Committee would like to point out that demand for capitation fee is not done through advertisement. This activity is always done in a dubious manner without giving any publicity whatsoever. The Committee also observes that demanding of capitation fee by any institution is strictly prohibited under clause 6 and action is liable to be taken against an erring institution as envisaged in clause 10. (Para 10.3)

The Committee recommends the Department to take into consideration the provision in this regard as mentioned in State laws which are very clear and specific so that not only the institutions but also any person who is in charge of or is responsible for the management demanding capitation fee or donation for admission to any course or programme of study come within the ambit of the legislation and action may be taken against them. The Committee, accordingly, recommends that clause 6(1) may be modified accordingly. (Para 10.4)

The Committee finds that clause 6(2) of the Bill is vague as any parent/guardian offering/paying capitation fee/giving donation may fall under this provision. Clause 14 prescribes that whoever committing an offence under the Act for which no penalty has been specified elsewhere is liable to a penalty extending to five lakh rupees. He can also be covered under clause 17 (1) whereunder any person contravening/attempting to contravene/abetting the contravention of provision(s) shall be punishable for imprisonment for a term upto three years or with fine or both. The Committee feels that such a provision is not required. This provision is also not there in the State laws. The Department may rethink about the inclusion of this provision in the Bill. (Para 10.5)

XI. CLAUSES 9, 10, 11, 12, 13 AND 14 RELATING TO PENALTIES

The Committee takes into cognizance the fact that a uniform amount of penalty for all types of offences is against the principle of natural justice. There should be different penalties for different violations and the penalties should also be proportional to the offence. A major and minor violation cannot be treated as equal. The Committee, accordingly, recommends to the Department that the quantum of penalties under these provisions needs to be worked out with reference to case to case basis based on merit of each case or violation. (Para 11.5)

The Committee is of the view that a penalty of Rs. one crore for charging of capitation fee will act as an effective deterrent for institutions/individuals involved in such an activity. The Committee also recognizes the need for specifying a minimum penalty for violations as it is believed that all offences under the Act should be treated as serious as they affect the interests of students and may put their future at stake. The Committee, therefore, would like the Department to take into consideration the various implications of the violations of these provisions on the students especially and then arrive at a maximum and minimum amount of penalty for the violations. (Para 11.6)

The Committee believes that insertion of the word 'knowingly' in clause 9 is unnecessary and it would dilute the objective of the provision as violators of this provision may take a plea that this offence was not done 'knowingly' by them. The Committee, accordingly, recommends the deletion of the same. (Para 11.7)

Apprehensions have been voiced about misuse of clauses 12 and 13 relating to penalties for false or misleading advertisement or untrue advertisement by the authorities since the determination of violations under these provisions can be very subjective. Holding both the institution and the authorized person equally and separately responsible does not seem to be justified. The Committee is in agreement with this apprehension and requests the Department to review these provisions. (Para 11.8)

The Committee observed that clause 14 dealing with penalty for which no specific provision is made under the Act, did not seem to be reasonable and clearly worded. When asked to clarify, the Department stated that this provision had been included so as to ensure that if any penalty was not prescribed anywhere in the legislation, still the act of

omission or commission mandated by the legislation was executed by the institution. For example, as per clause 5, it was mandatory for the prospectus to be published and if the any institution failed to do so, then the office-bearers could be proceeded against as per clause 14. While the Committee finds the contention of the Department reasonable, it would like to draw its attention towards clause 17 relating to 'offences' whereunder any contravention/attempt to contravene/abetment in contravention of any provision of the Act/Rules was to be considered an offence. This clause proposes imprisonment upto three years or with fine or with both. The Committee observes that along with specific clauses dealings with specific offences, a general provision *i.e.* clause 14 dealing with all such offences for which no penalty has been prescribed, the justification for having another general clause (clause 17) dealing with all contraventions of the provisions of the Act/rules made thereunder does not seem to be there. To quote the Department, non-publication of prospectus as envisaged in clause 5 can also be considered an offence under clause 17 as it would be in contravention of clause 5 and accordingly imprisonment/fine or both can be imposed. At the same time, it is also liable to be covered under clause 14. The Committee, therefore, is of the view that it would be appropriate to review clauses 17 and 14 and retain the clause which is required in the Bill. The Committee recommends to the Department for revisiting this provision and analyzing the need for it in the proposed Legislation. (Para 11.9)

XII. CLAUSE 15 : CONFISCATION OF CAPITATION FEE, ETC

The Committee notes that capitation fee after being confiscated would be dealt with as prescribed by the rules. The Committee opines that the Department can take a cue from the State laws and decide whether the confiscated fee should be forfeited to the Government or may be paid to the person concerned. (Para 12.2)

XIII. CLAUSE 16 : ADJUDICATION OF PENALTY

The Committee is of the opinion that in the absence of any time-line, there is every possibility that adjudication by the Educational Tribunal can be a prolonged affair which would definitely go against the interests of the students. The Committee strongly feels that a specific time-line for disposal of cases needs to be laid down so as to ensure that grievances/complaints of students/teachers/other employees are disposed of at the earliest. An effective Grievance redressal mechanism along with time-limit prescribed through rules/regulations/norms for disposal of cases by Educational Tribunals can prove to be beneficial for the affected parties. The Committee would appreciate if necessary provisions are incorporated at the relevant place. (Para 13.3)

XIV. CLAUSE 17 : OFFENCES

The Committee is of the view that with State/National Educational Tribunals being given the authority to adjudicate in the matter relating to contravention of provisions of the Act, inclusion of a provision whereunder notwithstanding award of penalty by Educational Tribunals, imprisonment for a term extending to three years or with fine or both, does not seem to be justified. Similarly, on non-payment of penalty imposed by Educational Tribunal or non-compliance of its directions/orders, prison term extending to three years or with fine from rupees fifty thousand to rupees five lakh or with fine is also proposed. The Committee finds even this provision to be somewhat harsh. It is also not clear which authority would be designated for this task. The Committee has also taken note of clause 36 of the Educational Tribunals Bill, 2010, whereunder non-compliance of any order of State Educational Tribunal is liable to be punishable with a imprisonment term extending to three

years or with fine upto ten lakh rupees. The Committee is of the view that with a specific provision (clause 36) already incorporated in the Educational Tribunals Bill, 2010, inclusion of similar provision having another penalty provision does not seem to be based on justifiable grounds. The Committee feels that right course of action would be to have the provision in the Tribunals Bill, 2010 and the present legislation need not focus on that aspect. accordingly, be deleted. Clause 17 may, (Para 14.4)

XV. CLAUSE 18 : COGNIZANCE OF OFFENCES

The Committee is in agreement with the view of the stakeholders that the rationale for prohibiting approaching the court through authorized officer will unnecessarily delay the cause of aggrieved party, particularly the students. The provision will make the students helpless if they do not have the right to approach the courts directly. It would also mean a prolonged procedure for redressal of grievances. (Para 15.5)

The Committee is not fully convinced by the contention of the Department for denying the aggrieved party opportunities to approach the courts directly. There are bound to be cases where due to unfair practices resorted to by an institution, career as well as future prospects of a student are at a stake. It may so happen that he is being denied a seat wrongfully, or his certificates are being not returned or there have been unfair practice in the conduct of examination. Urgent remedy could be awarded for them. Thus, it is more than clear that in the event of only very genuine grievance of the affected party where all the prescribed channels have failed to provide relief, it would be compelled to approach the court. Here also at the final stage when the time is running out, one is made to approach the designated authority in the first instance which would defeat the very purpose of having such a provision. This mechanism would be available to institution authorities who might be implicated in a false case. It is true that such cases would be rare but justice needs to be provided to all. The Committee would also like to draw the attention of the Department to clause 45 relating to "Dismissal of frivolous or vexatious complaints" of Educational Tribunals Bill, 2010 reproduced below:

"where a matter instituted before any State Educational Tribunal or the National Educational Tribunal, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding fifty thousand rupees as may be specified in the order." (Para 15.6)

The Committee feels that in view of the above provision in the Educational Tribunals Bill, with the specific provision for debarring of only civil court and thus criminal courts being authorized, a provision like clause 18 does not seem to be required. Necessary modifications may be carried out accordingly. (Para 15.7)

XVI. CLAUSE 21 : OFFENCES BY INSTITUTIONS

The Committee is of the view that making authorities like Governor and Chancellor (they can be Vice President or President) liable for punishment cannot be considered proper from any angle. Such provisions are not there in the State Acts. Authorities included under the provision of 21(2) are misplaced, accordingly the same may be modified. (Para 16.3)

XVII. CLAUSE 23 : BURDEN OF PROOF

The Committee is in full agreement with the submission of the Department that putting onus on educational institutions would make the institution assume greater

responsibility in informing students and other stakeholders about its standard of quality, infrastructure etc. According to the Committee, the provision seems to be justified specially in view of the fact that aggrieved party would be a student/ his parents who would be approaching a Tribunal against the management of an institution. The institution would be more economically efficient than the aggrieved student or his/her parents and the burden of proof should therefore lie with the accused. (Para 17.4)

XVIII. CLAUSE 26 : NON-APPLICABILITY OF THIS ACT TO MINORITY INSTITUTIONS IN CERTAIN CASES

The Committee observes that although the Department has clarified that minority educational institutions would not be exempted from the operation of other laws such as regulatory standards of education, the clause seems to be quite vague. It does not seem to indicate that minority educational institutions, if found resorting to unfair practices would be liable for action. The right to administer does not include right to maladminister. The Committee will like to draw attention to the Supreme Court judgment in TMA Pai case where the Apex Court, endorsing the concept that there should be no reverse discrimination has observed that “the essence of Article 30 (1) is to ensure equal treatment between the majority and the minority institutions.” Accordingly, no one type/category of institutions should be disfavored, or for that matter, receive more favorable treatment than other. The Committee feels that the present provision can lead to an interpretation whereby any instance of unfair practice resorted by a minority educational institution may not be acted upon. It needs to be ensured that interests of all the students including those studying in minority institutions are safeguarded. Therefore, a specific provision is required to be there which will clearly bring the minority educational institutions within the ambit of the legislation without violating their rights under Article 30. (Para 18.4)

XIX. CLAUSE 30 : APPLICATION OF OTHER LAWS NOT BARRED

The Committee finds merit in the argument and believes that even though it is implied that the central law would prevail over the state laws, no scope should be left for confusion leading to multiplicity of litigations. The Committee, however, takes note of the fact that a similar provision is mentioned in the Educational Tribunals Bill, 2010 along with a provision which enables the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The Committee wonders as to why the same provisions has not been added in the proposed legislation. The Committee, accordingly, recommends the Department to revisit the said provision and make necessary changes. (Para 19.3)

XX. CONCLUSION

The Committee would like to reiterate that the spirit behind bringing this piece of legislation is laudable. However, at the same time, the Committee also strongly feels that implementation of this long awaited law needs to begin at the earliest. Apprehension of the Committee is based on the realities at the ground level due to the anticipated delay in the setting up of State Educational Tribunals as well as the large number of higher educational institutions of different categories governed by various statutory authorities spread across the country. In such a scenario, the Committee is of the view that the Department of Higher Education along with the Ministry of Health and “Family Welfare will have to come forward as a nodal authority. They would have to work together in coordination with state authorities without impinging upon the state autonomy. Every effort will have to be made

so as to ensure that this path-breaking legislation takes off at the earliest and thereafter enforced in the real sense. (Para 20.1)

The Committee feels that there is a requirement of more institutions of higher education, specially in the sphere of medical education so as to produce more doctors. The practice of charging of capitation fee is also directly related to the shortage of seats in medical institutions. The problem is more acute in the Post graduation studies where the number of seats is very less. Thus, more medical institutions are required to be set up in the country to produce more medical professionals. It is a simple question of demand and supply which has led to the unfair practice of charging of capitation fee. Acute shortage of teaching faculty in higher educational institutions especially in medical institutions is another problem area. The Committee is of the view that these issues are related to each other and can be overcome by opening of more medical colleges in the regions/states which have less or no medical college. This would not only help in removing the regional disparities in this regard and increase the number of seats in medical education but would also go a long way in meeting the requirement of doctors in the country which is increasing day by day. This would also help in tackling the issue of rural versus urban divide which is at present tilted towards urban areas. As regards the issue of shortage of faculty, the Committee understands that at present one professor in the medical institutions guides 1 to 2 students only in postgraduate studies whereas the position is far better in some developed countries like United States of America and U.K. where a professor guides approximately 7 to 8 students. The Committee feels that it is a question of bringing into practice new methods of pedagogy and techniques so as to make optimum use of the existing faculty which would help in solving this problem to some extent. The Committee also feels that the other way to tackle the problem of teachers specially in medical colleges is that of taking initiative by Central government/State Governments in tandem in attracting more and more professionals particularly youth towards teaching profession by making it more lucrative and providing best of the facilities. (Para 20.3)

The Committee was also made aware that at present many of our students have been going to Russia, China, Kazakhstan and other countries in quest for medical degrees who on their return are not allowed to practice in country. The Committee strongly feels that a viable solution to this problem needs to be found so as to protect both the interest of our students and provide quality healthcare to our people. (Para 20.4)

MINUTES

II
SECOND MEETING

The Committee on Human Resource Development met at 3.30 P.M. on Thursday, the 23rd September, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri N.K. Singh – *in the Chair*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri N. Balaganga

LOK SABHA

7. Shri Kirti Azad
8. Shri P.K. Biju
9. Shri Suresh Chanabasappa Angadi
10. Shrimati J. Helen Davidson
11. Shri P.C. Gaddigoudar
12. Shri Deepender Singh Hooda
13. Shri P. Kumar
14. Shri Prasanta Kumar Majumdar
15. Capt. Jai Narain Prasad Nishad
16. Shri Sheesh Ram Ola
17. Shri Brijbhushan Sharan Singh
18. Dr. Vinay Kumar Pandey 'Vinnu'
19. Shri P. Viswanathan
20. Shri Madhu Goud Yaskhi

LIST OF WITNESSES

- I. Department of Higher Education, Ministry of Human Resource Development**
- (i) Shrimati Vibha Puri Das, Secretary(HE)
 - (ii) Shri Sunil Kumar, Additional Secretary
 - (iii) Shri R.P. Sisodia, Director, UGC

V
FIFTH MEETING

The Committee on Human Resource Development met at 4.00 p.m. on Tuesday, the 19th October, 2010 in Room '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri M. Rama Jois
5. Shri N. Balaganga

LOK SABHA

6. Shri P.K. Biju
7. Shri Jeetendrasingh Bundela
8. Shri Suresh Chanabasappa Angadi
9. Shrimati J. Helen Davidson
10. Shri P. C. Gaddigoudar
11. Shri P. Kumar
12. Shri Prasanta Kumar Majumdar
13. Capt. Jai Narain Prasad Nishad
14. Shri Sheesh Ram Ola
15. Shri Brijbhushan Sharan Singh
16. Shri Joseph Toppo
17. Dr. Vinay Kumar Pandey 'Vinnu'
18. Shri P. Viswanathan

LIST OF WITNESSES

Department of Higher Education, Ministry of Human Resource Development

1. Shrimati Vibha Puri Das, Secretary
2. Shri R.P. Sisodia, Director, (UGC)
3. Shri R.R. Meena, US, (UGC)

Legislative Department Ministry of Law & Justice

4. Shri V.K. Bhasin, Secretary
5. Shri Diwakar Singh, Dy. Legal Counsel

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri J. Sundriyal, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the Members to the meeting and apprised them that Secretary, Department of Higher Education has been called to complete her presentation on the Prohibition of Unfair Practices in Technical Institutions, Medical Institutions and Universities Bill, 2010 which had remained inconclusive in an earlier meeting.

3. *** **

4. The Committee, thereafter, heard the Secretary, Department of Higher Education on the Prohibition of Unfair Practices in Technical Institutions, Medical Institutions and Universities Bill, 2010. The Members raised queries and sought clarifications on various provisions of the Bill. The Secretary responded to some of the queries raised by the Members and for the remaining queries/clarifications, the Committee directed the Secretary, Department of Higher Education to submit written replies. The Committee also decided to refer the memoranda received in response to its Press Communiqué on the Bill as well as a second set of questionnaire to the Department for their comments.

(The witnesses then withdrew)

5. *** **

6. The Committee further deliberated on status of the remaining Bills pending with it and felt that given the heavy agenda and time constraints, it would be difficult to examine and report on the Bills within deadlines fixed. Therefore, it decided to seek extension of time upto 31st December, 2010 on the (Amendment) Bill, 2010. The Committee also decided to seek further extension of time upto 31st January, 2011 in respect of (i) Prohibition of Unfair Practices in Technical Institutions, Medical Institutions and Universities Bill, 2010 (ii) ***

*** and (iii) *** . The Committee authorised the Chairman to take up the request for extension of time accordingly with the Hon'ble Chairman, Rajya Sabha.

VI
SIXTH MEETING

The Committee on Human Resource Development met at 3.30 P.M. on Thursday, the 28th October, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri N. K. Singh
7. Dr. Janardhan Waghmare

LOK SABHA

8. Shri Kirti Azad
9. Shri P. K. Biju
10. Shri Jeetendrasingh Bundela
11. Shri Suresh Chanabasappa Angadi
12. Shri P.C. Gaddigoudar
13. Shri Deepender Singh Hooda
14. Shri Prataprao Ganpataro Jadhav
15. Shri P. Kumar
16. Shri Prasanta Kumar Majumdar
17. Shri Sheesh Ram Ola
18. Shri Tapas Paul
19. Shri Ashok Tanwar
20. Shri Joseph Toppo
21. Dr. Vinay Kumar Pandey 'Vinnu'

LIST OF WITNESSES

I. University Grant Commission

1. Prof. Sukhdeo Thorat, Chairman, UGC
2. Prof. Ved Prakash, Vice Chairman, UGC
3. Dr. K.P. Singh, Joint Secretary, UGC

II. Ministry of Health and Family Welfare

1. Ms. K. Sujatha Rao, Secretary
2. Shri Debasish Panda, Joint Secretary
3. Shri Ranjit Roy Chaudhury, Member, Board of Governors, MCI

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri J. Sundriyal, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee which was convened to hear the views of the Chairman, University Grant Commission, Secretary, Ministry of Health and Family Welfare alongwith Member, Board of Governors, MCI on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010.

3. The Committee, first heard the views of the Chairman, University Grants Commission on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 with special emphasis on issues like qualitative aspects of education as well as faculty, recognition and relevance of courses, fake universities, capitation fees, charging of exorbitant fees, steps to curb the menace of unfair practices etc. Members raised certain queries which the Chairman, UGC replied to. The Committee directed the Chairman, UGC to furnish clause-wise comments of the Commission on the Bill for its consideration. The Committee decided to hear the Commission again on the feedback received in the form of such comments. The Committee also decided to send a questionnaire to the Commission for detailed replies.

(The witnesses then withdrew)

4. Thereafter, the Committee heard the views of the Secretary, Ministry of Health and Family Welfare and Member, Board of Governors, Medical Council of India on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 with special reference to consultation process, status of faculty and qualitative aspects of medical educational institutions which have been brought within the ambit of the said Bill. The members raised certain queries which were replied to by the Secretary, Ministry of Health and Family Welfare and Member, Board of Governors, MCI. The Committee decided to send a questionnaire to the Ministry for detailed replies.

(The witnesses then withdrew)

5. A verbatim record of the proceedings was kept.
6. The Committee then adjourned at 5.20 P.M.

XI
ELEVENTH MEETING

The Committee on Human Resource Development met at 3.30 p.m. on Tuesday, the 21st December, 2010 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi

LOK SABHA

9. Shrimati J. Helen Davidson
10. Shri Deepender Singh Hooda
11. Shri P. Kumar
12. Shri Sheesh Ram Ola
13. Shri Joseph Toppo
14. Shri Madhu Goud Yaskhi

I. List of Witnesses on The Architects (Amendment) Bill, 2010 Representatives of All India Council for Technical Education

- (i) Professor S.S. Mantha, Chairman, AICTE
- (ii) Dr. (Col.) M.K. Hada, Member-Secretary, AICTE

II. List of Witnesses on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010

A. Representatives of Education Promotion Society for India

- (i) Dr. H. Chaturvedi, President
- (ii) Mr. Manohar Chellani, Secretary General
- (iii) Dr. K. Ramanarayan, Vice-Chancellor, Manipal University
- (iv) Mr. Sekar Vishwanathan, Member
- (v) Dr. R.P. Singh, Member
- (vi) Mr. M.N. Raju, Member
- (vii) Mr. N.V. Hegde, Member

- (viii) Mr. Taranjit Singh, Member
- (ix) Mr. Binod Dash, Member
- (x) Mr. Prashant Bhalia, Member
- (xi) Mr. P. Palanivel, PRO

B. Representatives of Indian Council of Universities

- (i) Brig. (Dr.) S.S. Pabla, President
- (ii) Dr. D.S. Chauhan, Secretary General
- (iii) Dr. Rajneesh Arora, Vice Chancellor, Punjab Technical University, Punjab
- (iv) Shri Ashok Kumar Mittal, Chancellor, Lovely Professional University
- (v) Shri Naresh Kaushik, Advocate SC (Advisor to the Council)

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary
 Shri N.S. Walia, Director
 Shri Arun Sharma, Joint Director
 Shri Sanjay Singh, Assistant Director
 Shrimati Himanshi Arya, Committee Officer
 Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee convened to hear the Chairman, AICTE on the Architects (Amendment) Bill, 2010 and two stakeholders on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010. The Chairman then discussed with the members about the proposed study visit of the Committee to Mumbai, Pune, Hyderabad, Chennai, Thiruvananthapuram and Bangalore in the later half of January and first half of February, 2011 in connection with the examination of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 and also on the subject, 'Faculty Position in Higher Educational Institutions' and 'Reforms in Higher Education'. After some discussion, the Committee authorized the Chairman to approach Hon'ble Chairman, Rajya Sabha for seeking necessary permission for the study visit.

3. *** *** *** *** ***

(The witnesses then withdrew)

4. Thereafter, the Committee heard the views of the representatives of the Education Promotion Society for India and Indian Council of Universities on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 with the focus on the impact of the legislation on the participation of the private sector in the higher education sector and problem areas perceived by them in the provisions of the Bill. The Chairman and members sought clarifications on the said Bill which were replied to by the witnesses. The Committee decided to send a questionnaire to both the organizations for their written replies.

(The witnesses then withdrew)

- 5. A verbatim record of the proceedings was kept.
- 6. The Committee then adjourned at 5.35 P.M.

XIV
FOURTEENTH MEETING

The Committee on Human Resource Development met at 3.00 p.m. on Monday, the 14th February, 2011 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshva Rao
4. Shri N.K. Singh

LOK SABHA

5. Shri Kirti Azad
6. Shri P.K Biju
7. Shri Jeetendrasingh Bundela
8. Shri Suresh Chanabasappa Angadi
9. Shrimati J. Helen Davidson
10. Shri P.C. Gaddigoudar
11. Shri Prataprao Ganpatrao Jadhav
12. Shri P. Kumar
13. Capt. Jai Narain Prasad Nishad
14. Shri Sheesh Ram Ola
15. Shri Ashok Tanwar
16. Shri Madhu Goud Yaskhi

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

LIST OF WITNESSES

1. Prof. S.S. Mantha, Chairman, AICTE
 2. Dr. (Col.) M.K. Hada, Member-Secretary, AICTE
2. At the outset, the Chairman welcomed the members to the meeting of the Committee convened to hear the views of the Chairman, AICTE on the Prohibition of Unfair Practices in

Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 and the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 and also to consider and adopt Draft 234th Report on the Central Educational Institutions (Reservation in Admission) Amendment Bill, 2010

3. The Committee first heard the views of the Chairman, AICTE on various provisions of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 and the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, with focus on the impact of both the Bills in the field of Higher Education. The Chairman and Members raised queries on both the Bills which were replied to by the Chairman, AICTE.

4. *** **

5. A verbatim record of the proceedings was kept.

6. The Committee then adjourned at 5.25 P.M. to meet again on 15th February, 2011.

XV
FIFTEENTH MEETING

The Committee on Human Resource Development met at 11.00 A.M. on Tuesday, the 15th February, 2011 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri N. Balaganga

LOK SABHA

5. Shri Kirti Azad
6. Shri P.K. Biju
7. Shri Jeetedrasingh Bundela
8. Shri Suresh Chanabasappa Angadi
9. Shrimati J. Helen Davidson
10. Shri P.C. Gaddigoudar
11. Shri Prataprao Ganpatrao Jadhav
12. Shri Prasanta Kumar Majumdar
13. Capt. Jai Narain Prasad Nishad
14. Shri Sheesh Ram Ola
15. Shri Ashok Tanwar
16. Dr. Vinay Kumar Pandey 'Vinnu'
17. Shri P. Viswanathan
18. Shri Madhu Goud Yaskhi

LIST OF WITNESSES

Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities, Bill, 2010

I. Manav Rachna International University, Faridabad

1. Dr. N.C. Wadhwa, IAS (Retd.), Vice Chancellor
2. Col. V.K. Gaur, Executive Director and Dean
3. Dr. V.K. Mahna, Executive Director and Dean - Academics
4. Dr. Ashok Kumar, Executive Director - Administration
5. Ms. Shweta Bajaj, Law Officer

II. Amity University, Noida

1. Shri Atul Chauhan, Chancellor
2. Dr. Balvinder Shukla, Pro Vice Chancellor (Academics) and Director General, Amity School of Engineering and Technology (ASET), Amity University, U.P.
3. Dr. B.B. Singh, Director and Head, Quality Assessment and Enhancement (QAE), Amity University, U.P.
4. Dr. Sunita Singh, Director (Admissions) Amity University, U.P.
5. Shri R.M. Sharma, Principal Advisor to Founder President, Ritnand Balved Education Foundation (RBEF).
6. Rear Admiral Kochhar, Asstt. Vice Chancellor, and OSD (HR & Admn.), Amity University, U.P.

III. Shri Guru Gobind Singh Indraprastha University, Delhi

1. Dr. Bhaskar P. Joshi. Registrar
2. Prof. Yogesh Singh, Controller of Examinations
3. Dr. Nitin Malik, Joint Registrar (Affiliation)

IV. Association of Indian Universities

1. Dr. P.T. Chande, President, AIU and Vice Chancellor, Kavikulguru Kalidas Sanskrit University, Ramtek, Maharashtra
2. Prof. Beena Shah, Secretary General, AIU
3. Mrs. Vijaya Sampath, PS to SG, AIU

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee convened to hear the representatives of private Institutions/Universities on the Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and Universities, Bill, 2010 and other institutions/stakeholders on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010.

3. The Committee first heard the views of Manav Rachna International University, Amity University, private universities and Shri Guru Gobind Singh Indraprastha University, a State University, on the Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and Universities, Bill, 2010 with special focus on the impact of legislation on the participation of private sector in higher education and the problems perceived by them once the provisions of the Bill become operational. The Chairman and Members sought clarifications which were replied to by the witnesses. The Committee decided to send questionnaire to each of the organizations/institutions for their written replies.

(The witnesses then withdrew.)

4. The Committee, then, heard the views of the representatives of the Association of Indian Universities on various provisions of the Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and Universities, Bill, 2010 and the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010. The Chairman and Members raised certain queries on both the Bills which were replied to by the witnesses. The Committee decided to send a questionnaire on both the Bills to the organization for its written replies.

(The witnesses then withdrew.)

5. *** *** *** *** ***

6. A verbatim record of the proceedings was kept.

7. The Committee then adjourned at 5.35 P.M.

XXI
TWENTY FIRST MEETING

The Committee on Human Resource Development met at 11.00 A.M. on Wednesday, the 20th April, 2011 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Dr. K. Keshava Rao - *in the Chair*
2. Shri Prakash Javadekar
3. Shri Rama Jois
4. Shri Pramod Kureel
5. Shri N.K. Singh
6. Dr. Janardhan Waghmare
7. Shri N. Balaganga

LOK SABHA

8. Shri Kirti Azad
9. Shri P.K. Biju
10. Shri Suresh Chanabasappa Angadi
11. Shri P.C. Gaddigoudar
12. Capt. Jai Narain Prasad Nishad
13. Shri Jeetendrasingh Bundela
14. Shrimati J. Helen Davidson
15. Shri P. Kumar
16. Shri Prasanta Kumar Majumdar
17. Shri Brijbhushan Sharan Singh
18. Shri Ashok Tanwar
19. Shri Joseph Toppo
20. Dr. Vinay Kumar Pandey 'Vinnu'
21. Shri. P Vishwanathan
22. Shri Deepender Singh Hooda
23. Shri Madhu Goud Yaskhi

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary
Shri Arun Sharma, Joint Director
Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer
 Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee convened to take up clause by clause consideration of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational institutions and Universities Bill, 2010
 *** **

3. The Committee first took up the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 for consideration. After detailed discussion, the Committee felt that there were certain issues relating to various provisions of the Bill which required further clarifications from the Department. Accordingly, the Committee deferred the clause by clause consideration of the Bill and decided to invite the Secretary, Department of Higher Education in its next meeting for further clarifications.

(Lunch break)

4. *** **

5. *** **

6. A verbatim record of the proceeding of the meeting was kept.

7. The Committee then adjourned at 5.15 P.M.

XXII
TWENTY SECOND-MEETING

The Committee on Human Resource Development met at 11.00 A.M. on Thursday, the 5th May, 2011 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N. K. Singh
8. Shri N. Balaganga

LOK SABHA

9. Shri P. K. Biju
10. Shrimati J. Helen Davidson
11. Shri Rahul Gandhi
12. Shri P. Kumar
13. Shri Prasanta Kumar Majumdar
14. Capt. Jai Narain Prasad Nishad
15. Shri Tapas Paul
16. Shri Brijbhushan Sharan Singh
17. Dr. Vinay Kumar Pandey 'Vinnu'
18. Shri. P. Vishwanathans

LIST OF WITNESSES

The Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and Universities, Bill, 2010

(I) Department of Higher Education

1. Shrimati Vibha Puri Das, Secretary
2. Shri Sunil Kumar, Additional Secretary
3. Dr. Ved Prakash, Vice-Chairman, UGC
4. Prof. S.S. Mantha, Chairman, AICTE

(II) Legislative Department, Ministry of Law & Justice

5. Dr. G. N. Raju, Joint Secretary

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

Shrimati Harshita Shankar, Committee Officer

2. At the outset, the Chairman welcomed the members to the meeting of the Committee convened to hear the Secretary, Department of Higher Education on the Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and Universities, Bill, 2010 and four organizations/associations on the Protection of Women against Sexual Harassment at Workplace Bill, 2010. The Chairman informed the members that the dates for presentation of Reports on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 and the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 was 15th and 31st May, 2011 respectively. The Chairman further informed that the Committee was to consider the clause-by-clause discussion on 20th April, 2011 on the Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and Universities, Bill, 2010, but due to certain queries of the members on the provisions of the Bill, the discussion was deferred and it was decided to hear again the Secretary, Department of Higher Education. Accordingly, the Committee required more time to have clause-by-clause discussion and adoption of the report on the Bill. On the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, the Chairman informed that the deliberations on the Bill were still not complete and therefore more time was required. Accordingly, the Committee while reviewing the status of the two Bills decided to seek extension of time from Hon'ble Chairman, Rajya Sabha till 31st May, 2011 for the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 and till 30th June, 2011 for the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010.

3. The Committee then heard the views of the Secretary, Department of Higher Education on certain issues relating to various provisions of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010. The Chairman and members raised some queries which were replied to by the Secretary.

(The witnesses then withdrew).

4. Thereafter, the Committee took up the clause-by-clause consideration of the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 and directed the Secretariat to draft a report on the Bill based on the deliberations.

5. *** *** *** *** ***

(The witnesses then withdrew.)

6. *** *** *** *** ***

7. A verbatim record of the proceedings was kept.

8. The Committee then adjourned at 5.45 P.M.

XXIV
TWENTY FOURTH MEETING

The Committee on Human Resource Development met at 3.00 P.M. on Thursday, the 26th May, 2011 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. Shri Oscar Fernandes – *Chairman*
2. Shrimati Mohsina Kidwai
3. Shri Pramod Kureel
4. Shri N.K.Singh
5. Shri N. Balaganga

LOK SABHA

6. Shri P.K. Biju
7. Shri Jeetendrasingh Bundela
8. Shrimati J. Helen Davidson
9. Shri P. C. Gaddigoudar
10. Shri P. Kumar
11. Shri Prasanta Kumar Majumdar
12. Capt. Jai Narain Prasad Nishad
13. Shri Sheesh Ram Ola
14. Shri Tapas Paul
15. Shri Brijbhushan Sharan Singh
16. Shri Ashok Tanwar
17. Shri Joseph Toppo
18. Shri Madhu Goud Yaskhi

SECRETARIAT

Shrimati Vandana Garg, Additional Secretary

Shri N.S. Walia, Director

Shri Arun Sharma, Joint Director

Shri Sanjay Singh, Assistant Director

Shrimati Himanshi Arya, Committee Officer

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee convened to consider and adopt the draft 236th Report on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010. The Chairman informed the members that the last date for presentation of the Report on the Bill is the 31st May, 2011.

3. The Committee, thereafter, took up for consideration the draft 236th Report on the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions

and Universities Bill, 2010. During the consideration of the Report, four Members namely S/Shri Prashanta Kumar Majumdar, Pramod Kureel, P.K. Biju and Shri Sheesh Ram Ola expressed their reservations on one or two aspects of the Report and submitted their dissenting notes. The dissenting note given by Shri Prashanta Kumar Majumdar was in Bengali language. The Chairman directed that the same may be annexed with the Report as Minutes of Dissent. Thereafter, the Committee adopted the Report.

4. The Committee authorized the Chairman to present the 236th Report to the Hon'ble Chairman, Rajya Sabha.

5. The meeting was adjourned at 4.30 P.M. to meet again on the 3rd June, 2011.

ANNEXURES

Bill No. 56 of 2010

THE PROHIBITION OF UNFAIR PRACTICES IN TECHNICAL EDUCATIONAL
INSTITUTIONS, MEDICAL EDUCATIONAL INSTITUTIONS AND UNIVERSITIES BILL, 2010

ARRANGEMENTS OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

CONDUCTING TEST FOR ADMISSION. PUBLICATION OF PROSPECTUS AND
PROHIBITION OF COLLECTION OF CAPITATION FEE, ETC.

3. Prohibition of accepting admission fee and other fees and charges without receipt.
4. Prohibition of admission without specified admission tests or *inter se* merit for selection of students.
5. Mandatory publication of prospectus, its contents and its pricing.
6. Prohibition of capitation fee.
7. Prohibition on refusal to, return, or, withholding degree, diploma, or, refund of fee. etc.
8. Prohibition of advertisements not based on facts or misleading.

CHAPTER III

IMPOSITION OF MONETARY PENALTIES

9. Penalty for doing contrary to information in prospectus.
10. Penalty for demanding or accepting capitation fee.
11. Penalty for refusal to return or withholding documents.
12. Penalty for false or misleading advertisement.
13. Penalty for untrue advertisement.
14. Penalty for which no specific provision is made under the Act.
15. Confiscation of capitation fee, etc.
16. Adjudication of penalty.

CHAPTER IV

OFFENCES

CLAUSES

17. Offences.
18. Cognizance of offences.
19. Offences to be non-cognizable.
20. Offences by societies or trusts.
21. Offences by institution.

CHAPTER VII

MISCELLANEOUS

22. Bar of jurisdiction.
23. Burden of proof.
24. Power to call for information.
25. Crediting sums realised by way of penalties to Consolidated Fund of India.
26. Non-applicability of this Act to minority institutions in certain cases.
27. Power of Central Government to make rules.
28. Rules to be laid before Parliament.
29. Protection of action taken in good faith.
30. Application of other laws not barred.
31. Power to remove difficulties.

Bill No. 56 of 2010

THE PROHIBITION OF UNFAIR PRACTICES IN TECHNICAL
EDUCATIONAL INSTITUTIONS, MEDICAL EDUCATIONAL
INSTITUTIONS AND UNIVERSITIES BILL, 2010

A

BILL

to provide for the prohibition of certain unfair practices in technical educational institutions, medical educational institutions and universities and to protect interests of students admitted or seeking admission therein and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Act, 2010.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “admission test” means competitive admission test referred to in section 4;

(b) “advertisement” means any document described or issued as advertisement through any form of media and includes any notice, circular or other documents inviting persons domiciled in India for admission to technical educational institutions, medical educational institutions and universities within or outside the territory of India;

(c) “appropriate statutory authority” means any authority established under any law for the time being in force for co-ordinating or determining or maintaining the standards of higher education for technical education, medical education and education in universities:

(d) “capitation fee” means any amount, (by whatever name called),—

(i) demanded or charged or collected, directly or indirectly, for, or, on behalf of any institution, or paid by any person in consideration for admitting any person as student in such institution; and which is in excess of the fee payable towards tuition fee and other fees and other charges declared by any institution in its prospectus for admitting any person as student in such institution; or

(ii) paid or demanded or charged or collected, by way of donation, for, or, on behalf of any institution, or paid by any person in consideration for admitting any person as a student in such institution;

(e) “institution” means a technical educational institution or medical educational institution or any such institution registered under the Societies Registration Act, 1860 and recognised as such by the appropriate statutory authority or a university as defined in section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a university under section 3 of that Act or under any other law for the time being in force;

(f) “National Educational Tribunal” means the National Educational Tribunal established under the Educational Tribunals Act, 2010;

(g) “notification” means a notification published in the Official Gazette and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly;

(h) “prescribed” means prescribed by rules made by the Central Government under this Act;

(i) “prospectus” includes any publication, whether in print or otherwise, issued for providing fair and transparent information, relating to an institution, to the general public (including to those

21 of 1860.
3 of 1956.

seeking admission in such institution) by the management of such institution or any authority or person authorised by such institution to do so;

(j) “State” means a State specified in the First Schedule to the Constitution and shall include a Union territory;

(k) “State Educational Tribunal” means the State Educational Tribunal established under the Educational Tribunals Act, 2010;

(l) “State Government”,—

(i) in relation to an institution situated in one state, means the State Government of that State;

(ii) in relation to an institution situated in more than one State, means the State Government of a State in which the main campus of such institution is situated.

(2) Words and expressions used in this Act and not defined but defined in the University Grants Commission Act, 1956 shall have the meanings respectively assigned to them in that Act.

CHAPTER II

CONDUCTING TESTS FOR ADMISSION, PUBLICATION OF PROSPECTUS AND PROHIBITION OF COLLECTION OF CAPITATION FEE, ETC.

3. (1) No institution shall, for admission in respect of any seat in any course or programme of study conducted in such institution, accept any payment towards admission fee and other fees and charges,—

(a) other than such fee or charges for such admission as declared by it in the prospectus for admission against any such seat; and

(b) without a proper receipt in writing issued for such payment to the concerned student so admitted in such institution.

(2) No institution shall charge any fee for an admission test other than an amount representing the reasonable cost incurred by it in conducting such test.

4. (1) In case the appropriate statutory authority has specified the process of selection for admission to any course or programme of study in any institution which includes conducting competitive admission test for ascertaining the competence of any person to pursue such course or programme of study, in that case, no person shall be admitted to such course or programme of study in such institution, except through an admission test conducted by,—

(a) a body as may be notified under this Act by the appropriate authority for conducting such admission tests; or

(b) such institution or a group of institutions if such institution or group of institutions have been so authorised by the Central Government or a State Government or any appropriate authority or by any other authority so authorised and notified to conduct such test.

Prohibition of accepting admission fee and other fees and charges without receipt.

Prohibition of admission without specified admission tests or *inter se* merit for selection of students.

(2) In case the process of selection for admission to any course or programme of study in any institution including conducting competitive admission test has not been specified under sub-section (1), in that case, no person shall be eligible for admission to such course or programme of study in such institution except through *inter se* merit to be specified in the prospectus of each institution.

(3) Every institution referred to in sub-sections (1) and (2) shall,—

(a) maintain the records of the entire process of selection of students including answer sheets of the competitive admission test conducted in respect of the admission of each student;

(b) exhibit such records in its website;

(c) be liable to produce such record, whenever called upon to do so by the appropriate statutory authority under this Act or any other law for the time being in force:

Provided that the records under this clause shall be maintained for a period of one year reckoned from the date of completion of the admission test subject to the condition that where the admission has been questioned in any court of law or tribunal, the records shall be maintained for such period as the court or tribunal may deem fit.

Mandatory
publication
of
prospectus,
its contents
and its
pricing.

5. (1) Every institution, shall publish, before expiry of sixty days prior the date of the commencement of admission to any of its courses or programmes of study, a prospectus containing the following for the purposes of informing those persons intending to seek admission to such institution and the general public, namely:—

(i) each component of the fee, deposits and other charges payable by the students admitted to such institution for pursuing a course or programme of study, and the other terms and conditions of such payment;

(ii) the percentage of tuition fee and other charges refundable to a student admitted in such institution in case such student withdraws from such institution before or after completion of course or programme of study and the time within, and the manner in, which such refund shall be made to that student;

(iii) the number of seats approved by the appropriate statutory authority in respect of each course or programme of study for the academic year for which admission is proposed to be made;

(iv) the conditions of eligibility including the minimum and maximum age limit of persons for admission as a student in a particular course or programme of study, where so specified by the institution;

(v) the educational qualifications specified by the relevant appropriate statutory authority, or by the institution, where no such qualifying standards have been specified by any statutory authority;

(vi) the process of admission and selection of eligible candidates applying for such admission, including all relevant information in regard to the details of test or examination for selecting such candidates for

admission to each course or programme of study and the amount of fee to be paid for the admission test:

(vii) details of the teaching faculty, including therein the educational qualifications and teaching experience of every member of its teaching faculty and also indicating therein whether such members are on regular basis or as visiting member;

(viii) the minimum pay and other emoluments payable for each category of teachers and other employees;

(ix) information in regard to physical and academic infrastructure and other facilities including hostel accommodation, library and hospital or industry wherein the practical training to be imparted to the students and in particular the facilities accessible by students on being admitted to the institution;

(x) broad outlines of the syllabus specified by the appropriate statutory authority or by the institution, as the case may be, for every course or programme of study, including the teaching hours, practical sessions and other assignments:

(xi) all relevant instructions in regard to maintaining the discipline by students within or outside the campus of the institution, and, in particular such discipline relating to the prohibition of ragging of any student or students and the consequences thereof and for violating the provisions of any regulation in this behalf made under the University Grants Commission Act, 1956 or any other law for the time being in force.

3 of 1956.

(xii) any such other information which may be prescribed:

Provided that an institution shall publish information referred to in items (i) to (xii) of this sub-section, on its website, and the attention of prospective students and the general public shall be drawn to such publication on the website through advertisements displayed prominently in the different newspapers and through other media:

Provided further that an institution may publish prospectus in accordance with this section at any time before the period of sixty days specified under this sub-section (1).

(2) Every institution shall fix the price of each printed copy of the prospectus, being not more than the reasonable cost of its publication and distribution and no profit be made out of the publication, distribution or sale of prospectus.

6. (1) No institution shall, directly or indirectly, demand or charge or accept, capitation fee or demand any donation, by way of consideration for admission to any seat or seats in a course or programme of study conducted by it.

Prohibition of capitation fee.

(2) No person shall, directly or indirectly, offer or pay capitation fee or give any donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any seat or seats in a course or programme of study in any institution.

Prohibition on refusal to, return, or, withholding degree, diploma, or, refund of fee, etc.

7. (1) No institution, who has in its possession or custody, of any document in the form of certificates of degree, diploma or any other award or other document deposited with it by a person for the purpose of seeking admission in such institution, shall refuse to return such degree, certificate, award or document to that person or withhold such degree, certificate award or other document with a view to induce or compel such person to pay any fee or fees in respect of any course or programme of study which such person does not intend to pursue or avail any facility in such institution.

(2) In case a student, after having admitted to an institution, for pursuing any course or programme of study in such institution, subsequently withdraws from such institution, no institution in that case shall refuse to refund such percentage of fee deposited by such student and within such time as has been mentioned in the prospectus of such institution.

Prohibition of advertisements not based on facts or misleading.

8. No institution shall, issue or publish,—

(a) any advertisement for inducing students for taking admission in the institution, claiming to being recognised by the appropriate statutory authority where it is not so recognised; or

(b) any information, through advertisement or otherwise, in respect of its infrastructure or academic facilities or of its faculty or standard of instruction or academic or research performance, which the institution, or, person authorised to issue such advertisement on behalf of the institution, knows to be false or not based on facts or to be misleading.

CHAPTER III

IMPOSITION OF MONETARY PENALTIES

Penalty for doing contrary to information in prospectus.

9. Any institution, which knowingly does anything contrary to the information published by it in its prospectus in violation of the provisions of section 5, shall, without prejudice to any proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees.

Penalty for demanding or accepting capitation fee.

10. Any institution, which demands or accepts capitation fee or donation, in any manner whatsoever, in violation of the provisions of section 6, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees.

Penalty for refusal to return or withholding documents.

11. Any institution, which refuses to return any degree, certificate, award or any other document or withholds such degree, certificate, award or any other document without having sufficient cause to do so, or fails to refund the fees in violation of the provisions of section 7, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to one lakh rupees.

12. Any institution, which publishes any advertisement, which is false or misleading, and in violation of the provisions of section 8, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees.

Penalty for false or misleading advertisement.

13. Where an advertisement issued, after commencement of this Act, in violation of the provisions of section 8, includes any untrue statement or falsely describes any fact or is misleading, every person who authorised the issue of such advertisement shall, without prejudice to proceeding under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to fifty lakh rupees.

Penalty for untrue advertisement.

14. Whoever, commits an offence under this Act for which no penalty has been specified elsewhere other than under this Chapter, shall, without prejudice to proceedings for prosecution under the provisions of this Act or any other law for the time being in force, be liable to a penalty which may extend to five lakh rupees and in the case of a society or trust, with a penalty which may extend to ten lakhs rupees.

Penalty for which no specific provision is made under the Act.

15. (1) Any capitation fee or donation or any other charges collected in contravention of the provisions of this Act, shall, without prejudice to the proceedings for prosecution or imposition of penalty under the provisions of this Act or any other law for the time being in force, be liable to be confiscated, by an order made by the concerned State Educational Tribunal or the National Educational Tribunal, as the case may be.

Confiscation of capitation fee, etc.

(2) The capitation fee or donation or any other charge confiscated shall be dealt in such manner as may be prescribed.

16. Save as otherwise provided in this Act, all the matters (including the penalties leviable under this Chapter) shall be adjudicated by the concerned State Educational Tribunal or the National Educational Tribunal, as the case may be.

Adjudication of penalty.

CHAPTER IV

OFFENCES

17. (1) Without prejudice to any award of penalty by the State Educational Tribunal or the National Educational Tribunal under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Offences.

(2) If any person fails to pay the penalty imposed by the State Educational Tribunal or the National Educational Tribunal or fails to comply with any of its directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Cognizance
of offences.

18. (1) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any institution or director, manager, secretary or other officer thereof, except on the complaint in writing of such person authorised by the Central Government or the State Government in that behalf or by such person authorised by the concerned appropriate statutory authority, as may be prescribed.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Offences to
be non-
cognizable.

19. (1) Every offence under section 6 of this Act shall be deemed as cognizable within the meaning of the Code of Criminal Procedure, 1973.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence, under this Act (other than an offence under section 6), shall be deemed to be non-cognizable within the meaning of the said Code.

2 of 1974.

Offences by
societies or
trusts.

20. (1) Where an offence under this Act has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section—

(a) “society” means any body corporate registered under the Societies Registration Act, 1860 and, “trust” means any body registered under the Indian Trusts Act, 1882 or any other law for the time being in force;

21 of 1860.

2 of 1882.

(b) “director”, in relation to a society or trust, means a member of its governing board other than an *exofficio* member representing the interests of the Central or State Government or the appropriate statutory authority.

21. (1) Where an offence under this Act has been committed by an institution, every person who at the time the offence was committed was in charge of, and was responsible to, the institution for the conduct of the business of the institution, as well as the institution, shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly:

Offences by institution.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by an institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any governor, chancellor, director, trustee, manager, secretary or other officer of such institution, such governor, chancellor, director, trustee, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER V

MISCELLANEOUS

22. No court shall have jurisdiction to entertain any dispute or proceeding in respect of any matter which the State Educational Tribunal or the National Educational Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction.

23. When an institution is accused of having committed an offence under section 8, the burden of proving that such institution has not committed such offence, shall be on the institution.

Burden of proof.

24. Notwithstanding anything contained in any other law for the time being in force, the Central Government or a State Government, as the case may be, and the appropriate statutory authority may, by a general or special order, call upon any technical educational institution or medical educational institution or university to furnish to that Government or the appropriate statutory authority, as the case may be, periodically or as and when required any information concerning the activities carried on by the institution or university as may be prescribed to enable that Government or the appropriate statutory authority, as the case may be, to carry out the purposes of this Act.

Power to call for information.

25. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Crediting sums realised by way of penalties to Consolidated Fund of India.

Non-applicability of this Act to minority institutions in certain cases.

26. Nothing contained in this Act or the rules made there under shall affect the right of the minorities to establish and administer educational institutions of their choice.

Power of Central Government to make rules.

27. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) any such other information to be contained in the prospectus under clause (xii) of section 5;

(b) the manner in which capitation fee or donation or other charges confiscated shall be dealt with under sub-section (2) of section 15;

(c) the persons authorised to file a complaint, before a court in respect of an offence under this Act on behalf of the Central Government or State Government or concerned appropriate statutory authority, under sub-section (1) of section 18;

(d) the information concerning the activities carried on by the technical educational institution or medical educational institution or university to be furnished periodically or as and when required by the Central or a State Government or appropriate statutory authority under section 24;

(e) any other matter which is to be or may be, prescribed or in respect of which provision is to be made by the Central Government by rules.

Rules to be laid before Parliament.

28. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Protection of action taken in good faith.

29. No suit or other legal proceedings shall be instituted against the Government or any officer or authority or person exercising powers or discharging functions under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or the rules or directions issued thereunder.

Application of other laws not barred.

30. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

31. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to
remove
difficulties.

Provided that no order shall be made under this section after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

There has been an unprecedented growth in higher education in recent years, of which the growth of higher professional education, especially technical and medical education has been mainly through private participation. The current national policy supported by several judicial pronouncements is against commercialization of higher education, though the policy encourages private 'not-for-profit' participation with surplus revenues to be ploughed back for growth and development of institutions.

2. There is public concern that technical and medical educational institutions and universities should not resort to unfair practices, such as charging of capitation fee and demanding donations for admitting students, not issuing receipts in respect of payments made by or on behalf of students, admission to professional programmes of study through non-transparent and questionable admission processes, low quality delivery of education services and false claims of quality of such services through misleading advertisements, engagement of unqualified or ineligible teaching faculty, forcible withholding of certificates and other documents of students.

3. Prompt and effective deterrent action is constrained in the absence of any Central law prohibiting capitation fee and other unfair practices. While the current policy in higher education is to promote autonomy of institutions, adoption of unfair practices by misusing autonomy would be disastrous for the credibility of the higher education sector. It would be in public interest to balance autonomy of higher education institutions with measures to protect the interests of students and others accessing higher education.

4. It is, therefore, proposed to provide for the matter specified in the preceding paragraph in the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010 which, *inter alia*, provides for—

(a) prohibition of accepting admission fee and other fees and charges other than such fee or charges for such admission as declared by the institution in the prospectus for admission against any seat and without a proper receipt in writing issued for such payment to the concerned student so admitted in the institution;

(b) prohibition of admission without specified admission test for selection of the students where such test is required to be conducted as per appropriate statutory authority;

(c) mandatory publication of prospectus, its contents and its pricing;

(d) prohibition of demanding or charging or accepting, directly or indirectly, capitation fee or demand by donation, by way of consideration for admission to any seat or seats in course or programme of study, by the institutions;

(e) prohibition on refusal to return or withholding degree, diploma, or other documents deposited with the institution or refund of fee, if the student withdraws from the institution;

(f) prohibition of advertisement not based on facts or misleading;

(g) imposition of monetary penalty upto fifty lakh rupees for doing contrary to information in prospectus, demanding or accepting capitation fee and publishing false or misleading advertisement or untrue advertisement and penalty upto one lakh rupees for refusal or withholding documents; confiscation of capitation fee or donation or any other charges collected in contravention of the provisions of the proposed legislation by the State Educational Tribunal and the National Educational Tribunal (proposed to be established under the Educational Proposed Tribunals Act, 2010).

5. Clause 26 of the Bill provides that the proposed legislation shall not affect the right of the minorities to establish and administer educational institution of their choice.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 19th April, 2010.

KAPIL SIBAL

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 27 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include matters (a) any such other information to be contained in the prospectus under clause (xii) of clause 5; (b) the manner in which capitation fee or donation or other charges confiscated shall be dealt with under sub-clause (2) of clause 15; (c) the persons authorised to file a complaint, before a court in respect of an offence under this Act on behalf of the Central Government or State Government or concerned appropriate statutory authority, under sub-clause (1) of clause 18; (d) the information concerning the activities carried on by the technical educational institution or medical educational institution or university to be furnished periodically or as and when required by the Central or a State Government or appropriate statutory authority under clause 24; and (e) any other matter which is to be or may be, prescribed or in respect of which provision is to be made by the Central Government by rules.

2. The rules made under clause 27 of the Bill, shall be laid, as soon as they are made, before both the Houses of Parliament under clause 28 of the Bill.

3. The matters in respect of which rules may be made are matter of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers, therefore, of normal character.

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to provide for the prohibition of certain unfair practices in technical educational institutions, medical educational institutions and universities and to protect interests of students admitted or seeking admission therein and to provide for matters connected therewith or incidental thereto.

(Shri Kapil Sibal, Minister of Human Resource Development)

